

31

फाइल नं./
File No. 7/12014/6/08-cdn

खण्ड
Volume

भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS

अनुभाग
SECTION

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CORRESPONDENCE

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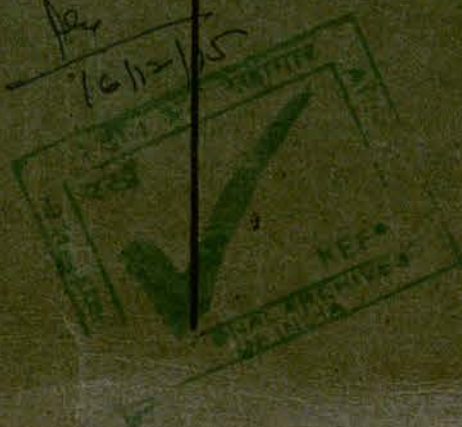
विषय
SUBJECT

W.P. No. (8215 (w)/08 filed by
Shri Subhash Chandra Basu + Others
Vs G.O.I + Others before the
Honble Court of Calcutta.

Noting 41 Page
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①
Government of India
Ministry of Home Affairs
IS Division/CDN Section

No.12014/6/2008-Cdn.

ISCDN1003

Subject: Writ Petition No.8215 (W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & others.

✓ 12-2-2012
Shri Subhash Chandra Basu & others have filed a Writ Petition in the Calcutta High Court in the matter of: The Public Records Act, 1993; Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India; The Right to Information Act, 2005 and Non-consideration of the representation dated 11.3.2008 against the Union of India - Ministry of Home Affairs, PMO, MEA and Ministry of Parliamentary Affairs. The petitioner has prayed before the Court that:

(a) A Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 in terms of earlier reference point No., (d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the commission for completion of enquiry in order to bring an end of controversy;

(b) A Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.5.2006 by the Central Government before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.5.2006 and render conscionable justice to the petitioners.

© A Rule NISI in terms of the prayers aforesaid;

(d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 till disposal of this writ application;

(e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

2. Ministry of Law and Justice vide letter dated 10 June, 2008 has appointed Shri T.K. Gosh as Advocate with Shri R.N. Das as his senior on behalf of the Union of India. Ministry of Law and Justice has further directed to send the para-wise comments to the Govt. Counsel.

3. Based on the material available with us para-wise comments on the Writ Petition has been attempted and are placed below for approval before the same are sent

(from page)

to the Govt. Counsel. However, it may also be stated here that Ministry of External Affairs, PMO and Ministry of Parliamentary Affairs have also been made party in the case. As the case relates mainly to MHA, we may file the reply on their behalf also.

Amar Chd

(Amar Chand)
US(Legal)
25.6.2008

DS(Legal)

Please discuss. Also please include Public Section's response at appropriate place.

1. Representation
2. Additional documents.
a) with us or other respondents.

9

49(4)

28/6

Discussed. Needful done. The comments may also be sent to PMO, MHA & MHA Defence etc. as these are also party in the case.

DS (Legal)

JSC(15)

Amar Chd
27/6/08

4751/DS(L)/08
26/6/08

Not received
in MHA

Through this petition the petitioner wants GOI to reopen Justice Mukherjee Commission of Inquiry Report or to reappoint another commission of inquiry into the alleged disappearance of Netaji Subhash Chander Bose, and to produce all relevant documents, including the order of rejection dt. 17-05-2006, (action taken report placed in Parliament a copy of which is at F/X). The petitioner has expressed a view that because of the RTI Act coming into force there is bright possibility to access and availability of records. The petitioner has also invited attention to his representation dated 11-03-2008, vide para 18 of the petition and stated that no reply from the authorities is a ^{reason} reason for filing the petition.

All the documents which were available with the Government were made available to the JMCI. At present there are no other documents available in the Cdn. Section except the exhibit of

JMCI which have already been examined and taken cognizance by the JMCI. However, a notice for a Provisional Starred Question received during April, 2008 pointed out 29 files ~~250~~ available with PMO, based on some news item captioned "Netaji se judi 29 files ki soochi sarvajanik Kare PMO" published in 'the dainik jaagran' dated 20-02-2008. We in MHA are not aware whether 29 files relating to Netaji Subhash Chander Bose are actually held by PMO or not. (Factual information sent against said notice to the PQ may be seen at F/Y in linked file).

PMO, MEA and Ministry of Parliamentary Affairs have also been made respondent apart from MHA in this case. It is proposed to file the counter affidavit as per the DFA after circulating it to other respondents for eliciting their views. PMO can be asked to indicate the factual position of 29 files (or more) being available with them.

Submitted please.

(S.K. Malhotra)
Dy. Secretary (Legal)
2-07-2008

J.S.(HS)

Plz get
reparably

2
2/7
DS(L)

4843/DS(L)/08
2/7/08

1477/JS/08
2/7

Principal Secretary in PMO is
re-shardent No 2. The reference
received from PMO may kindly be
seen at page 75/cor. It may be seen
from the writ petition that mainly MHA is
concerned with it. However, some paras of
the writ petition may have reference to PMO/
MEA/Min of Parliamentary Affairs as under:
PMO — Paras 6, 16.4, 16.5, 22.
MEA — Paras 16, 16.5, 18.
Ministry of Parli. Affairs — Para 6, 16.5, 18, 22.

Hence it is proposed also to get their
views for any addition/deletion/supplement
to our reply.

DS(L)

We may request other respondents
to supply inputs, especially on paras

Amr chd
21/10/08

for pr:-

- 4 -

4

mentioned in R.P. for preparation of Cardinated
Counter-affidavit. We may give them one week time.
We may get in touch with Sr. Counsel/counsel as please.
May kindly be seen.

7/7/08

JS(ts)

R/pa urgently with
RTI/other related files

8/7/08

DS(L)

4897/DS(L)/08
7/7/08

19(L)
9/7/08

- 5 -

Ministry of Home Affairs
IS Division
Cdn. Section
.....

Discussed with JS(IS) on 9.7.08 in the presence of DS(Legal).

2. The paras in the Writ Petition which relates to PMO may be seen at F/X and we may request PMO's comments on the same.

3. It may be mentioned that the notice for a Provisional Starred Question received during April, 2008 pointed out 29 files available with PMO. Factual information on the same may be available with PMO. We may also seek information on this from PMO.

4. Shri Sayantan Dasgupta had submitted application for providing information under RTI Act 2005 regarding certified copies of all documents exhibited before the Netaji Inquiry Committee of 1956 and the G.D. Khosla Commission of Inquiry of 1970-1974, ~~both~~ on the disappearance of Netaji Subhas Chandra Bose. The reply given to the said RTI question may be seen at F/Y in linked file.

5. Ministry of Law vide letter dated 2.7.2008 has informed that the matter has been fixed for discussion on 11th July, 2008 (received in MHA on 9.7.08). Shri Tarun Kumar Ghosh, Advocate appearing on behalf of Govt. of India has been requested on 9.7.08 to request the Hon'ble Court for extension of time for filing the affidavit on behalf of the Govt. of India. A draft to PMO is also placed below for consideration approval. Submitted please.

Amar Chel
(AMAR CHAND)
UNDER SECRETARY
10/7/08

11/7

Despite best efforts, we have not been able to contact Counsel (Smt. T. K. Sharma, Calcutta) on phone. We will write to him for knowing status of case, which was earlier scheduled for 11/7. May kindly approve draft letter to PMO.

JS(IST)

Pl. check next date & let us know

12/7

DS(L)

11/8/08

4958/DS(L) 14/7/08
Placed below

4958/DS(L) 14/7/08
Placed below

4958/DS(L) 14/7/08

1571/JS(IST) 14/7

Shri P. L.
Chief States
with Counsel.

JS(IST) 11/7
18/7
15/8
15/8

Subject : Writ Petitions filed in the High Court of Kolkata regarding Netaji Subhas Chandra Bose – Brief thereof.

Government of India has so far appointed three Committee/Commissions to inquire into the alleged disappearance of Netaji Subhas Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The third member of the Committee submitted a dissentient report. It is, however, mentioned here that the third member (Shri Suresh Chandra Bose) signed a document "Principal points agreed to for Draft Report dated 30th June, 1956" which has also been annexed to the report of the Committee. The Government of India accepted the majority report.

2. The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974. This Commission examined 224 witnesses and also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji. But this finding of the Commission also did not satisfy the people and there was vociferous demand from various quarters for setting up of another Commission on the alleged

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(for message)

- 7 -

disappearance of Netaji Subhash Chandra Bose. A writ petition was also filed before the Kolkata High Court and a Division Bench by its judgement dated 30th April, 1998 directed Union of India to re-inquire into the alleged disappearance of Netaji in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose. Ultimately the Government of India appointed a Commission headed by Justice M.K. Mukherjee, retired Judge of the Supreme Court on 14th May, 1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- a) whether Netaji Subhash Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the plane crash, as alleged;
- c) whether the ashes in the Japanese temple are ashes of Netaji;
- d) whether he has died in any other manner at any other place and, if so, when and how;
- e) if he is alive, in respect of his whereabouts.

3. JMCI (Justice Mukherjee Commission of Inquiry), after examining 131 witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits, submitted its report on 8th November, 2005 with the following findings:-

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8

(for messages)

Terms of reference	Conclusion of the Commission
whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
Whether he has died in any other manner at any other place and, if so, where and how;	In the absence of any clinching evidence a positive answer cannot be given;
If he is alive, in respect of his whereabouts.	Answer already given in (a) above.

4. The report of the JMCI was thoroughly examined. It was found that the Commission's inquiry was inconclusive in many ways and it has not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of "clinching evidence". Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple.

5. The findings of JMCI, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the

9
(for package)

- 9 -

Hospital where he was treated for third degree burn injuries sustained in the plane crash. Thus the Government of India found it difficult to accept the conclusions of JMCI. The report of the JMCI was placed before both the Houses of Parliament along with the ATR on 17th May, 2006 as per the provision of the Commissions of Inquiry Act, 1952.

6. The following Writ Petitions have been filed in the Hon'ble High Court of Kolkata regarding the disappearance of Netaji Subhas Chandra Bose.

- (i) WP No. 2003 of 2006 - Rudra Jyoti Bhattacharya Vs UOI on Netaji Subhas Chandra Bose. [F.No. I/12014 / 5 / 2007 - Cdn]
- (ii) WP No. 27541 (W) of 2006 filed by Sri Ashim Ganguly & Anr Vs UOI and Others. [F.No. 12014 / 12 / 2007 - Cdn]
- (iii) WP No. 8215 (W) / 2008 filed by the Subhash Chandra Basu and Others. [F.No. 12014 / 6 / 2008 - Cdn]

7. Brief on the above 3 writ petitions are as under :-

(i) **Writ Petition No.2003 of 2006 - Rudra Jyoti Bhattacharya Vs UOI on Netaji Subhas Chandra Bose :-**

The petition is against the non-acceptance by the Government of India of the report of Justice Mukherjee Commission appointed to inquire into the alleged disappearance of Netaji Subhas Chandra Bose. It has, inter alia, been prayed in the petition that the action taken report placed before the Houses of Parliament be set aside.

(ii) **In Writ Petition No. 27541 (W) of 2006 filed by Sri Ashim Ganguly & Anr Vs UOI and Others. The following have been made the parties:-**

- a) Ministry of Home Affairs.
- b) Office of the Prime Minister
- c) Ministry of External Affairs

d) Ministry of Parliamentary Affairs.

e) Director, Netaji Research Bureau

8. In this Writ Petition, the petitioner prays as under:-

- (a) A writ and /or writs in the nature of Mandamus commanding the Respondents, their men, agents, sub-ordinates, superiors, successors – in office to retain from incurring further public money from Government Exchequer for maintenance and up keeping of the Rankoji temple in Japan allegedly keeping the ashes as that of Netaji Subhas Chandra Bose who allegedly died on 18.8.1945 forthwith;
- (b) A writ and /or writs in the nature of Mandamus commanding the Respondents concerned, their men, sub-ordinates, superiors, successors – in office to place the Commission Report submitted by the Hon'ble Justice Manoj Kumar Mukherjee (Retired) on 08.11.2005 before the Members of Parliament for open debate or discussion immediately.
- (c) A writ and /or writs in the nature of Mandamus directing the Respondents concerned refrain from incurring any amount for the Respondent No. 5 from public exchequer to continue research work on any issue pertaining to Netaji including the alleged death of Netaji Subhas Chandra Bose;
- (d) A writ and /or writs in the nature of Certiorari directing the Respondent concerned to transmit and certify all relevant records relating to Inquiry on the alleged death of Netaji on 13.03.1945 allegedly took place in Plane Crash in Taihoku, Japan including the representation being Annexure – P/3 and the notification being the Annexure P/2 at the time of hearing of the Writ Petition and so as to render the conscionable justice after perusing the same;
- (e) A writ and /or writs in the nature of Prohibition foreboding the Respondents Nos. 1 to 4 from incurring any amount of public money from public exchequer for preservation and reservation and / or maintenance of Renkoji Temple, Japan allegedly keeping the ashes of Netaji allegedly died on 18.08.1945 till the disposal of this Writ Petition;

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(from Mr. Basu)

- 16 -

- (f) Rule NISI in terms of prayers (a), (b), (c), (d) and (e) as aforesaid;
- (g) An ad-interim order restraining the concerned Respondent from taking any step or steps to accept and / or bring or staking the alleged ashes kept in Renkoji Temple at Japan till the disposal till the disposal of the instant application.
- (h) Any other or further writ or writs, order or orders, direction or directions as your Lordships may deem fit and proper.

9. However, an additional application for addition of parties has been filed by Miss Debrani Ghosal, Advocate, High Court of Calcutta which refers to the various files / records of the Government of India.

(iii) **Writ Petition No. 8215 (W) / 2008 filed by the Subhash Chandra Basu and Others.**

10. Shri Subhash Chandra Basu & others have filed a Writ Petition in the Calcutta High Court in the matter of: The Public Records Act, 1993; Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India; The Right to Information Act, 2005 and Non-consideration of the representation dated 11.3.2008 against the Union of India - Ministry of Home Affairs, PMO, MEA and Ministry of Parliamentary Affairs. The petitioner has prayed before the Court that:

- (a) A Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 in terms of earlier reference point No., (d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the

(for Mr. Das)

commission for completion of enquiry in order to bring an end of controversy;

(b) A Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.5.2006 by the Central Government before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.5.2006 and render conscionable justice to the petitioners.

(c) A Rule NISI in terms of the prayers aforesaid;

(d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 till disposal of this writ application;

(e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

Ministry of Law and Justice vide letter dated 10 June, 2008 has appointed Shri T.K. Gosh as Advocate with Shri R.N. Das as his senior on behalf of the Union of India. Ministry of Law and Justice has further directed to send the para-wise comments to the Govt. Counsel. But the parawise comments of the Government of India are yet to be filed in the Hon'ble Court of Kolkata.

11. A meeting was held in PMO on 1.9.2008 under the Chairmanship of Secretary to PM, a reference dated 4th Sept, 2008 received from PMO in this connection may kindly be seen at page 222/cor (F.No. I / 12014 / 12 / 07 - Cdn]. Accordingly, Ministry of Law may kindly see and suggest the course

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(for reference)

of action to be taken by MHA for filing affidavit on behalf of all. Ministry of Law may also like to advise the Government Counsel to correspond with MHA. Further, the advice of Attorney General of India regarding the case and for securing the services of a senior most Counsel for representing the Government in the case may also be obtained.

5957/054/08
12/9/08

Amar Chand
(Amar Chand)
US (Legal)
5.9.08

P. Jha
9/9

Sharma

DS (Legal)

JSL:ST

3/12
11/9/08

Sharma
15/9/08

Ministry of Law

(*Sh. S. K. Datta*)

DSL

P. Sharma
19/9

Adv 'A'

2158/1500/08
15/9

through
W. K. Jha
5
16/9

72/cdms/08
18/9/08

विधि कार्य विभाग
Dept. of Legal Affairs
Adv. A Section
सा. सं./Dy. No. 2421/08
Date 19/9/08

No.12014/12/07-Cdn.

Ministry of Home Affairs
IS Division/Cdn. Section

Subject : Writ Petitions filed in the High Court of Kolkata regarding Netaji Subhas Chandra Bose

As per the decision taken in the meeting held in PMO on 1st Sept, 2008, our three files alongwith the brief about the Court cases pending in the High Court of Kolkata regarding Netaji Subhas Chandra Bose was sent to the Ministry of Law, on 18.9.2008 for their advise in the matter. The advise of the Ministry of Law is still awaited.

2. Department of Legal Affairs, Kolkata branch vide letter dated 25.11.2008 has informed that the WP No. 8215(W) /2008 may come up for hearing before the Hon'ble Court at any time and MHA may expedite their parawise comments and brief history of the case immediately and also a responsible officer from MHA who is conversant with the matter should come down to Kolkata immediately to brief Shri R N Das, Special Counsel in the matter.

3. The matter was discussed with "Advised A" Section of Ministry of Law over phone who stated that MHA may ~~be sent~~ a reminder to Ministry of Law in this case. Accordingly, a draft OM is put up for approval.

Amar Chand
(Amar Chand)
US (Legal)
27.11.2008

27.11.08

DS (Legal)

US(L)

Above note may kindly be seen.
2. The response of Deptt. of Legal Affairs, M/o Law is still awaited. Another reminder has been issued on 2/12/08 (P.7/cor). Sh. S.L. Datta, Addl. Govt Counsel informed over phone on 2/12/08 that the matter has already been referred for the opinion of A.G. in September, 2008 itself and

(from mortgage)

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MHA may like to take up the matter with him itself. Accordingly, P to AG was requested over phone on 2/11/00 to expedite the opinion of the office of AG keeping in view the urgency in the matter. P to AG informed that on a reference received from M.O. Law, AG has already been informed highlighting the urgency in the matter.

3. Director (L) / Jt (S) may also like to speak to A.G. for expediting his opinion.

Aman Chel
3/11/00

Director (L) spoke to the O/o AG. They promised to send the advice in a day or two.


3/12


~~USLE~~

Aman Chel
3/12

S.O. (Legal Cell)


Tel. No
PP

3/12

~~USLE~~
P.G.'s office Tel. No
23383254

3/12

Director (L)

if spoke.


3/12

~~USLE~~
Wofent

Shoken

3/12

Government of India
Ministry of Home Affairs
IS Division/CDN Section

Subject: Writ Petition No.8215 (W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & others.

✓ p 3-70/c

Shri Subhash Chandra Basu & others have filed a Writ Petition ✓ in the Calcutta High Court in the matter of: The Public Records Act, 1993; Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India; The Right to Information Act, 2005 and Non-consideration of the representation dated 11.3.2008 against the Union of India - Ministry of Home Affairs, PMO, MEA and Ministry of Parliamentary Affairs. The petitioner has prayed before the Court that:

(a) A Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 in terms of earlier reference point No., (d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the commission for completion of enquiry in order to bring an end of controversy;

(b) A Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.5.2006 by the Central Government before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.5.2006 and render conscionable justice to the petitioners.

© A Rule NISI in terms of the prayers aforesaid;

(d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 till disposal of this writ application;

(e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

2. Ministry of Law and Justice vide letter dated 10 June, 2008^x has appointed Shri T.K. Gosh as Advocate with Shri R.N. Das as his senior on behalf of the Union of India. Ministry of Law and Justice has further directed to send the para-wise comments to the Govt. Counsel.

3. In pursuance of the meeting held in PMO on 1.9.2008 under the Chairmanship of Secretary to PM, the matter was referred for the advice of

x/p-1/c

(from loose page)

- 17 -

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Attorney General of India through the Ministry of Law. The advice of AG may kindly be seen at F/X.

4. The AG in his advice has also stated that "there is an averment in paragraph 15 of the Writ Petition that there is 'recently' an order of Central Information Officer whereby some secret and top secret files have become available which were not made available to the Mukherjee Commission of Inquiry. The said order has not been annexed, but references to some newspaper articles have been made. This requires to be looked into. If there is no such order or any top secret file, the same should be brought on affidavit before the High Court. If there is such an order, the matter may be looked into as to whether it requires reconsideration. The prayer in the said Writ Petition is to reappoint or continue the MCI, which should be opposed in as much as Mukherjee Commission took 6 years and 7 months and there is no fresh material or record which was not before the Mukherjee Commission which justifies the reappointment or reopening of the Mukherjee Commission of Inquiry." It may be submitted here that these records pertain to PMO and the reply in para 15 of our comments needs to be got verified from PMO. (DFA).

5. Based on the advice of AG and the material available with us para-wise comments on the Writ Petition have been attempted and are placed below for approval before the same are sent to the Govt. Counsel. Additional Govt. Advocate/Incharge vide letter dated 25th November, 2008 has stated that Shri R.N. Das, Spl. Counsel is of the opinion that the Deptt. should furnish para-wise comments and brief history of the case immediately to him as the matter is very serious one so that the Affidavit in Opposition can be prepared without further loss of time. The matter may come up any day before the Division Bench presided over by the Hon'ble Chief Justice. He also desires that a responsible officer from Ministry of Home Affairs, who is conversant with the matter, should come down to Kolkata immediately to brief him. However, it may also be stated here that Ministry of External Affairs, PMO and Ministry of Parliamentary Affairs have also been made party in the case. As the case relates mainly to MHA, we may file the reply on their behalf also.

Amar Chand

(Amar Chand)
US(Legal)
23.12.2008

DS(Legal)

We may request PMO as per DFA - I on 'X' - above.
US(Legal) may be debriefed to meet the
Counsel.

JS(LS)

as amended

6/11/09

DS(L)

Pl. spec
to
DS(L)

12/12
21/05

✓ p 161-166
C

+ p 165/C

- X

Xp 167-168
C

SS/DS(L)/09 (Person/leave)
6/11/09

7/12/09
6/1

Pl. discuss.
9
with

Discussed.
2

Subject: WP No. 8215 (W) /2008 filed in the Calcutta High Court
by the Subhash Chandra Basu & Anr. Vs UOI & Ors.

Notes on page 16 – 17 / ante explain the case.

2. The reply from PMO may kindly be seen at 'F/Y'. Basically, para 15 of the Writ Petition refers to the 'Secret' and 'Top Secret' files / documents / records relating to the alleged Netaji disappearance or death and conferment of Bharat Ratna award posthumously. It has been stated that these records have been made open to the public by the order of the Central Information Officer. As these records pertain to the PMO, PMO was requested vide our letter dated 9th Jan, 2009 for intimating the exact position. The reply of PMO does not specifically mention that there may be some materials in these documents which have not been made available to the Justice Mukherjee Commission and on the basis of the same, the reopened Commission may be able to complete and / or raise further query into the alleged death or disappearance of the Netaji Subhash Chandra Bose. Further, on the basis of the materials received from PMO reply to para 15 have been revised. However, we may again request PMO to verify our reply to para 15 as per the draft letter placed below.

Amar Chand
(Amar Chand)
US (Legal)
29.1.2009.

DS (legal) – On leave

JS (IS-II)

US (Legal)

5/2 So (Legal)

5/2

P. 27-28/6

P. 178/C

F14

41 DFA

P 213/33(15-2)/9
5/2

Ref FR p-204/C.

This is the reply received from PMO w.s.t. our I.D. dated 5.2.09.

Based on the Advice of AG and letter from PMO dated 21.1.09, comments w.s.t. para 15 of the petition were prepared and sent to PMO for vetting.

Now PMO instead of vetting has stated that MHA will act as nodal Ministry regarding the matter and would keep them apprised. As such, question of vetting by PMO does not arise.

But para No. 15 pertains to PMO, MHA is not responsible for reply to Para No. 15. It is for PMO to prepare reply to para No. 15 as the records pertain to PMO and they know better the facts more clearly. It is for PMO if they want to add or vet the comments prepared by MHA before filing the same in Calcutta High Court.

US (Legal)

(B.K. Chhtri)
4/3/09

MHA is taking action for coordinating the reply to be filed on behalf of PMO, MHA, MEA and M/o Parliamentary Affairs, as was decided in the meeting held in PMO on 20.1.9.2008. However, in para 15 of the writ petition mention

✓ P. 199K

⊕ P. 161C

⊕ P. 170C

4 FR
P. 204C

Chom mung

has been made to the records available with PMO on the basis of which re-appointment of Justice Mubhaire Commission has been suggested. Therefore, we may again write to PMO on per draft placed below.

Amar Chel
4/3/09

1
4/3/09

DS (Legal)

DS (IS-II)

A revised draft to PMO as discussed in the Chamber of DS (IS-II) today i.e. 16/3/09 is put up for approval.

This was discussed today.

Amar Chel
16/3/09

1
16/3

DS (Legal)

DS (IS-II)



16/3

DS

PR issue

16/3

Sol (Cdr)

386/DS(2)/09
5/3/09

F.649/DS(15-II)/09
16/3

16/3
16/3

No.12014/6/2008-Cdn.

Ministry of Home Affairs
IS-II Division/CDN Section

Subject: Writ Petition No.8215 (W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & others.

Shri Subhash Chandra Basu & others have filed a Writ Petition in the Calcutta High Court in the matter of: The Public Records Act, 1993; Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India; The Right to Information Act, 2005 and Non-consideration of the representation dated 11.3.2008 against the Union of India - Ministry of Home Affairs, PMO, MEA and Ministry of Parliamentary Affairs. The petitioner has prayed before the Court that:

- (a) A Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 in terms of earlier reference point No., (d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the commission for completion of enquiry in order to bring an end of controversy;
- (b) A Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.5.2006 by the Central Government before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.5.2006 and render conscionable justice to the petitioners.
- (c) A Rule NISI in terms of the prayers aforesaid;
- (d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhash Chandra Bose in 1945 till disposal of this writ application;
- (e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

22
(from package)

- 22 -

2. Ministry of Law and Justice vide letter dated 10 June, 2008 has appointed Shri T.K. Gosh as Advocate with Shri R.N. Das as his senior on behalf of the Union of India. Ministry of Law and Justice has further directed to send the para-wise comments to the Govt. Counsel.

P. 11/C

3. In pursuance of the meeting held in PMO on 1.9.2008 under the Chairmanship of Secretary to PM, the matter was referred for the advice of Attorney General of India through the Ministry of Law. The advice of AG may kindly be seen at F/X.

P. 165/166/C

4. The AG in his advice has also stated that :-

"there is an averment in paragraph 15 of the Writ Petition that there is 'recently' an order of Central Information Officer whereby some secret and top secret files have become available which were not made available to the Mukherjee Commission of Inquiry. The said order has not been annexed, but references to some newspaper articles have been made. This requires to be looked into. If there is no such order or any top secret file, the same should be brought on affidavit before the High Court. If there is such an order the matter may be looked into as to whether it requires reconsideration. The prayer in the said Writ Petition is to reappoint or continue the MCI, which should be opposed in as much as Mukherjee Commission took 6 years and 7 months and there is no fresh material or record which was not before the Mukherjee Commission which justifies the reappointment or reopening of the Mukherjee Commission of Inquiry".

P. 165/C

(4) As these records pertain to PMO, they were requested on 9.1.2009 to verify / revise the reply of para 15 of the Writ Petition. The reply received from PMO vide ID dated 21.1.2009 may be seen at page 179 / C. Further, matter was again taken up with PMO vide ID dated 5.2.2009 (P/199/C) dated 26.2.2009 (P-203/C). PMO did not vet the reply but stated that MHA may take all necessary action as per the decision taken in the meeting held in PMO on 1.9.2008. PMO was again requested vide ID dated 16.3.2009 (page -205 / C) either to suggest an answer to para 15 of the Writ Petition or accord concurrence to the reply proposed by MHA. The reply now received from PMO and HS's minutes thereon may kindly be seen at F/A. PMO has provided the list of files. The list of file does not indicate any new facts.

(4) P. 178/C

5. Additional Govt. Advocate/Incharge vide letter dated 25th November, 2008 has stated that Shri R.N. Das, Spl. Counsel is of the opinion that :-

P. 223-236/C

"the Deptt. should furnish parawise comments and brief history of the case immediately to him as the matter is very serious one so that the Affidavit in Opposition can be prepared without further loss of time. The matter may come up any day before the Division

P. 176/C

(from the page)

Bench presided over by the Hon'ble Chief Justice. He also desired that a responsible officer from Ministry of Home Affairs, who is conversant with the matter, should come down to Kolkata immediately to brief him"

6. To sum up, the file is submitted for approval of the following:-
- (a) Parawise comments of Ministry of Home Affairs on the Writ Petition.
 - (b) Filing of an affidavit on behalf of PMO, Ministry of External Affairs and Ministry of Parliamentary Affairs, as these have also been made party in the Writ Petition. No reference has been made to Ministry of External Affairs and Ministry of Parliamentary Affairs as these are not directly related to the issues mentioned in the Writ Petition except PMO, whose comments have been obtained.
 - (c) Deputing an officer from the Ministry of Home Affairs to meet the Additional Government Counsel at Kolkata to brief him about the case.

DS(Legal)

JS(15. II)

Amar ch
(Amar Chand)
US(Legal)
23.3.2009

JS
23/3

Letter

1. I.D.No.1249196/PMO/2009-Pol.I dated 19/02/2009 from Prime Minister's Office regarding Writ Petition No.8215 (W)/2008 filed in the Kolkata High Court by Shri Subhash Chandra Basu & others may kindly be seen at flag 'A'.

2. HS had desired that this file may be put up to him. Notes from p.20/n. onwards may kindly be seen. Para-wise comments of MHA on the above Writ Petition have been prepared and they may kindly be seen at flag 'B'.

3. It is proposed to depute either US (Shri Amar Chand) or DS (Shri S.K. Malhotra) to Kolkata for briefing Additional Government Counsel so that the counter-affidavit is filed in this case at the earliest.

[Lokesh Jha]
Joint Secretary (IS-II)
24/03/2009

HS

The para-wise
comments require
tightening. JS (IS-II) should see
personally. Jst
25/3/09

JS (IS-II)

Pl. Spk

26/3

DS

727/TS(15-II)09
24/3

F-6384/12/09
24/3

148(L)
5
27/3

Reference notes on package.

2. Revised para-wise comments carrying out the correction is put up for approval.

Amarchi
21/3/09

hs/2
31/3

~~DS (Cgarl)~~
~~JS (15-2)~~

~~31/3~~

634/DS(2)/19
31/3/17
806/JS(15-11)09
31/3

F-6384/14/15
31/3

~~HS~~

Qok
31.3.09

~~JS (US-11)~~

~~1/4~~

hs/2)
4/5

~~DS~~
~~US~~

Since no reply has been received from Additional Government Counsel in the W.P.No. 8215(W)/08 - Subhesh Chandra Basu & others.

A reminder to Addl. Govt. Counsel is placed below. For signature please

NK
26/10/09

So(Cdn)

NK

Bisetti
26/10/09

Ministry of Home Affairs
IS-II Division

Subject:- Tour Report in respect of visit to Kolkata High Court in the matter of hearing of W.P. No. 2003/2006 – Rudra Jyoti Bhattacharya vs Union of India.

As per the approved orders, the undersigned proceeded to Kolkata in the morning of 8th July 2010 along with Smt. Baljeet Kaur Rekhi, Section Officer and carried documents for handing over to ASG and briefing him in connection with the above case.

2. The ASG fixed the meeting at 5.30 pm for the briefing. Copies of the following papers were handed over to ASG.

(i) Report of the Justice Mukherjee Commission (Vol. I and Vol. II-A & II-B).

(ii) Photocopy of original W.P. No. 2003 of 2006 and affidavit of UOI. Copy of affidavit on ATR and copy of supplementary affidavit.

(iii) Photocopy of WP 27541 of 2006 – Shri Ashim Kumar Ganguly Vs Union of India draft affidavit sent by the Ministry.

(iv) Copy of WP No. 8215 (W) of 2008 Subhash Chandra Bose Vs UOI and parawise comments sent to the Addl. Govt. Advocate / Incharge, Department of Legal affairs Branch Sectt., Kolkata (parawise comments also handed over to Govt. Counsel Shri T.K. Ghosh on 14.5.2010).

3. ASG desired to know the stand of the Govt. of India on the Writ Petitions as to whether GOI was in favour of another commission. It was informed:

(i) Govt. was not in favour of any other commission in the matter.

(ii) That Netaji Subhash Chamdra Bose is dead.

- (iii) Govt. of India was not incurring any expenditure on the upkeep of ashes preserved at Renkoji Temple at Taihoku, Japan

4. The ASG desired to have the copies of discussions on the report of Justice Mukherjee Commission of Enquiry Report in both houses of Parliament as soon as possible. His junior advocate Sh. Nizamuudin also desired to have one full set of JMCI Report.

5. ASG was informed that parawise commenrts on W.P. No. 8215/2008-Subhash Chandra Basu Vs. UOI were prepared and sent to Smt. S. Bhattacharya, Additional Govt. Advocate/Incharge, Branch Sectt. Kolkata on 2.4.2009 and parawise comments were also handed over to Shri T.K. Ghosh, Government Advocate on 14.5.2010 but affidavit has not been prepared and filed. ASG desired that a strict letter be issued and a copy marked to the Hon'ble Law Minister.

6. ASG also desired that we may remain present in the Court to watch the proceedings. Accordingly, on 9th July, 2010, the case i.e. W.P.No.2003/2006 – Rudra Jyoti Bhattacharya & Ors Vs. UOI &Ors which was at first position in the list in Court No.1 was presided over by Hon'ble Chief Justice Shri J.N. Patel and Justice Shri Bhaskar Bhattacharya. Learned ASG filed both the affidavits. The Hon'ble Court desired, both, the petitioners and the respondents, to file synopsis of the case. The matter is now listed for 23rd July, 2010.

7. In the afternoon, the undersigned met Smt. S. Bhattacharya and brought to her notice that Ministry has not received the affidavit in WP No. 8215/08- Subhash Chandra Basu Vs. Union of India & Ors. The parawise comments had been sent to her on 2.4.2009 and reminders were also sent to her and that Copy of the parawise comments were also handed over to Shri T.K. Ghosh on 14.5.2010 by Shri Amar Chand, Under Secretary, MHA on his visit to Kolkata. Smt, Bhattacharya has now directed Shri Ghosh to prepare affidavit in consultation with ASG and sent the same to this Ministry for affirmation. She has directed the undersigned

29

29

that the draft affidavit may be got typed on green sheet when received, affirmed by the Oath Commissioner, High Court, Delhi and sent to them alongwith 4 copies thereof.

The above is submitted for information.

L.P. Shrivastava
(Smt. L.P. Shrivastava)
US (NSA)
12.7.2010

DS(S)

1922/DS(S)/10
13/7

2071/15 (15-11)
13/08/10

Sy
12/7

JS(S)

Please chase the matter
and inform me when the
affidavit is received

Pratap
13/7

DS(S)

19/15A)
5
13/7

We may write a letter to Mr. T. K. Ghosh, Advocate, High Court Kolkata for preparing the Affidavit in consultation with AS G as per DFA.

H
13/7
SO (can).

US(SA)

B. B. Sahni
13/7/10

L.P. Shrivastava
13/7/10

30
30-
4-

Ref. Tour to Kolkata in connection with
Justice Mukherjee Commission Report/
3 Court cases.

As per discussion on 8.7.10 &
9.7.10 following letters are required
to be issued:

1. Letter to Sh. T.K. Ghosh, Advocate w.r.t.
discussion with S. Bhattacharya, Addl.
Advocate/Incharge, Deptt. of Legal Affairs,
Branch Sectt., Kolkata to prepare the
Affidavit in Writ Petition 8215 (W)
of 2008 - Subhash Chandra Basu vs.
U.O.I in consultation with Additional
Solicitor General Sh. Farooq M.
Razak.
2. Letter to Lok Sabha Secretariate and
Rajya Sabha Secretariate for providing
a copy of the debate on Justice
Mukherjee Commission Report
tabled in both the houses on 17.5.06
as desired by ASG Sh. Razak.
3. Letter to Sh. Mohd Nizamuddin, Advocate
~~forwarding~~
~~sending~~ a set of Mukherjee Commission
Report (Vol I, II A and II B) as requested.

DFA I, II and III for approval
please.

US (NSA)

B. Datta
14/7/10

W. Datta
14/7/10

DS (S) on by
DS (L) away to CIC.

Letter has issued & resubmit the file
tomorrow to DS(S).

W. Datta
14/7

SO (cont)

File is resubmitted as desired above.

B. Datta
15/7/10

DS (S)

For info with J3 (I-11)'s
orders at p. 3/11 and p. 257-261/C

1958/DS(S)/10
16h

M. de Paz
page number
10/7

J3 (I-11)
Michael
15/7/10

DS (S)
US (cont)
D. Datta
10/7

Reference 'FR'. p.262) C.

2. Senior Standing Government Advocate and Incharge of Department of legal Affairs, Branch Secretariat, Kolkata has vide his letter dated 3rd September, 2010 has informed that Writ Petition 8215 of 2008 Bushas Chandra Bose Vs Union of India & Ors came up before the Hon'ble Chief Justice, the Hon'ble Justice Jainaryan Patel and the Hon'ble Justice Bhattacharya on 20th August, 2010. when the Learned Additional Solicitor General Mr. Farrok M. Razack and Shri Tarun Kumar Ghosh, Advocate appeared on behalf of Union of India. After hearing their Lordships were pleased to direct the Union of India to file Affidavit-in-Opposition on or before the next date of hearing fixed on 10th September 2010. The said letter has been addressed to SO (Cdn.) who has received it at 3.05 p.m. on 10th September, 2010.

3. It is stated that the parawise comments had already been sent to the Senior Central Government Advocate, Smt. S. Bhattacharya in April, 2009 and has been reminded again and again if the affidavit had been filed. During the visit of the undersigned to Kolkata on 8th July, 2010 we had met her and also requested to let us know whether the affidavit has been filed or otherwise. She had shown her ignorance on having received the parawise comments. The parawise comments has also been handed over to our counsel in May, 2010 by Shri Amar Chand, the then US (Legal). Since then matter has been followed by again and again. The Counsels have not taken any action (notes on page 19-20/n refer).

Submitted for further directions.

L.P. Shrivastava
13/9/10
(Smt. L.P. Shrivastava)
Under Secretary (NSA)
13.9.2010

DS(S)

US(NCR) may indicate whether he had any discussion with the Advocate on the above issues and any further action is required to be taken by the Ministry

US(NCR)

[Signature]
13/9

P.T.O

Reference notes on mortgage.

2. This issue was not brought to my notice by Cdn Section. Further, there was no discussion with ASG during my visit to Calcutta on the issue.

Amich
13/9/10

DS (Security)

We may request ASG again to give suitable instructions to his adroGater and take immediate action in the matter.

JS (15/11) Immediately
Amich
14/9

Amich
13/9

~~DS~~

Amich P-100 f.u.m.
14/9

~~USC (Cdn)~~

2472/DS (Cdn) 10
14/9
1053/75 (15-11) 10
14/3

11
14/9
se (Cdn)

Ref: Note of VS(Legal) on page 34/n.

The position stated at 'X' is in correct. The parawise comments w.r.t. Subhash Chandre Basu case were prepared and sent by VS(Legal) on 2.4.09. This issue was discussed with Sh. T. K. Ghosh by VS(Legal) on 14.5.10 during his tour to Kolkata and again handed over the parawise comments to him for preparing the affidavit (Note on page 19-20/n may please be seen).

During visit of VS(NSA) and the undersigned, the copy of parawise comments was handed over to ASG, Kolkata also. The issue was also discussed with S Bhattacharya and she had assured to direct Sh. T. K. Ghosh to prepare the affidavit.

VS(NSA)

May please see.

B. D. Chhikhi
16/9/10

Subhash Chandra
16/9/10

AS(S)

May kindly see w.r.t. all para from p. 10. We may again furnish the above
psich to ASG, Kolkata
16/9

2499/2515/10
16/9

20
16/9
SO(Cd)

JSC 15-11 / Piyel
A. Put up a draft 16/9/10
by letter to ASG
D/S
16/9
16/9

From the page.

DFA Please.

BK Akhi
20/9/10

US(USA)

Draft amended for
approval please.

Lat. Fl. 10/7
20/9/10

DS(S)

8/9/2010
US(India)

Discussed with DS(S)

21/9
SO (Cdr)

Sub:- Writ Petition No. 8215 (W) of 2008
Subhas Chandra Basu Vs. UOI.

The case came up for hearing
on 19.11.2010. DS(S) briefed ASG Kolkata
on 18.11.2010 and attended the Court on
19.11.2010.

In the above mentioned case
parawise comments were sent by
the Ministry on 2.4.2009 to Addl.
Govt Advocate / Incharge for preparing
the affidavit.

Despite repeated reminders

and even personally handing over the
parawise comments to Sh. T. K. Ghosh,
on 14.5.2010 by Sh. Amar Chand Under
Secretary Legal during his visit to Kolkata,
the affidavit has not been received. Thereafter
the parawise comments were also handed
over to ASG 8.7.2010 during the visit of
undersigned alongwith US (NSA) Sh. L. P.
Shrivastava.

Now the case is coming up for
hearing on 13.1.2011 for finalising the
issue. File is submitted for bringing it
to the notice of Home Secretary.

(Bhaddi)
22/11/10

US (NSA)

In this connection the notes of
undersigned on visit to Calcutta may
kindly be seen on page 27-29/N.
Reminders to Lgt. Advocate had
been sent on 15/7/2010 (P 258/cv.)
and a detailed reminder on

22/9/2010 (P- 205-166/cv.)

submitted pl.

met Sh. Vikram Kishore Lal Bhabha
Mr. Richter on 22/11/10
for 12014/52007
Cdn. 15/6
24/11/10
Solely

DS (S)

Reference FR Page 282 to 302/Cor.

Sub : Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by Subhash Chandra Basu and others.

Note on page 21 to 23/N may please be seen. The para-wise comments on the writ petition were sent on 2-4-2009 to Ms. S Bhattacharyya, Addl Govt. Advocate / In-Charge Ministry of Law & Justice, Deptt. of Legal Affairs, Branch Secretariat, Kolkata, for preparing the Affidavit.

Shri G S Makkar, Junior Central Govt. Advocate has sent the Affidavit-in-opposition for approving the same by the Ministry. The Affidavit has been typed and compared. File is submitted for approving the Affidavit and filing the same in the Calcutta High Court.

(B. K. Rekhi)
(B. K. Rekhi)
Section Officer
09-12-2010

US(NSA) - On leave

DS(Security)

I have corrected the draft para-wise
Comments. Pl. put up of revised one

9/11/2010

US (C. Anshu)
So (C. Anshu)

Corrections have been carried out in the Affidavit and is placed on file for approval please.

US(NSA)

DS (C. Anshu)

Pl. put up an
disposal and sendal with a copy letter to
PMI, PMIA, MOP Affairs, MCA, MCA
10/12/10

10/12/10
10/12/10

Reference Note on pre-page.

Sub : Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by Subhash Chandra Basu and others.

Note on page 21 to 23/N may please be seen. The para-wise comments on the writ petition were sent on 2-4-2009 to Ms. S Bhattacharyya, Addl Govt. Advocate / In-Charge Ministry of Law & Justice, Deptt. of Legal Affairs, Branch Secretariat, Kolkata, for preparing the Affidavit.

Shri G S Makkar, Junior Central Govt. Advocate has sent the Affidavit-in-opposition for approving the same by the Ministry. The Affidavit has been typed and compared. File is submitted for approving the Affidavit and filing the same in the Calcutta High Court. We may also send a copy of this Affidavit to PMO for their comments as per DFA.

B. K. Rekhi

(B. K. Rekhi)
Section Officer
14.12.2010

US(NSA) - On leave

DS(Security)

A revised draft Para-wise Comments /
draft affidavit is put up for approval. Since MHA
is filing the affidavit on behalf
of Pml, Office M/o Parliamentary
Affairs MHA, we may forward the
same to them for their Comments.
After receipt of the Comments we
may finalise the same and seek
the approval of Secy(ES)/H
and then affirm it in the
Kolkata High Court.

It put up with JS(ES-IT)
enclosure
used by DSS

JS
Approved
14/12/10 14/12

3300/DS(ES)/H
14/12

1527/DS(ES-IT)
15/12

Fair letter for signature please.

US (NSA) on leave
DS (S)

B. B. Dhilli
15/12/10

N. issue by Dhilli w up
16/12

Soculi

Ref. FR p. 325-327/C

This is a letter received from Senior Court Advocate + Incharge S. Bhattacharyya requesting to affirm the Affidavit in opposition from Oath Commissioner Delhi High Court (two copies typed in engrossed papers ~~and~~ one for Hon'ble Chief Justice and another for second judge and five copies in white sheet to other side counsel and our ~~counsel~~ counsel) She has requested to send the Affidavit immediately as the case is coming up for hearing on 13.12.11.

We have written a letter

to PMO, External Affairs and m) Parliamentary
Affairs for sending their comments
on the draft Affidavit by 24.12.10.
We may await the comments

Submitted please.

(BKAbhi)
23/12/10

US (USA)

DS (S)

tel: 23/12/10

Pl follow up and get the comments.

Also pl give me the telephone no
that I will talk to the concerned officials.

29/12

US (USH)

23/12

SO (AST)

✓ p328/C

x p329/C

The reply from Ministry of Parliamentary
Affairs and PMO has been received. But the
vetting of draft from MEA is still
awaited. We may send another reminder

-41-

to MEA as per DFA.

VS (NSA)

Brahmi
21/1/11

314/DS/411
24/1

co (cdn)

Relatively
Rem. on the Signer
21/1/11
82
24/1.

VS (NSA)
24/1

Ms Kuchib

27-
Ministry of Home Affairs
IS-II Division

Subject: Tour report in respect of visit to Kolkata High Court for filing affidavit in respect of WP No. 2003/2006 – Rudhra Jyoti Bhattacharya vs Union of India & others.

As per the approval, the undersigned visited Kolkata from 13th to 15th May, 2010 in connection with the filing of two affidavits in respect of the above Writ Petition in the Kolkata High Court.

2. On 13.5.2010, I met Shri S.S. Sarkar, Addl. Govt. Counsel in the Ministry of Law, Kolkata Branch and handed over the para-wise comments on the Supplementary Affidavit as well as affidavit in opposition on behalf of the Government of India to be filed in the Court. After completing certain formalities, I alongwith one official of the Law Ministry visited the Kolkata High Court and the two affidavits were filed as under:

i) Affidavit on behalf of the respondents in opposition vide High Court's Dy No. 166 dated 13.5.2010.

ii) Affidavit in opposition to the Supplementary Affidavit vide Dy. No. 165 dated 31.5.2010.

3. Thereafter, I met Shri G. S. Makkar, Jr. Govt. Standing Counsel in the Ministry of Law, Kolkata Branch to know the status of other two Court cases and their position has emerged as under:

i) W.P. No. 27541 (W) of 2006 – Sh. Ashim Ganguly & Anr Vs Union of India.

Shri Makkar handed over a copy (F/A) of the letter dated 12.4.2010 written by Shri T. K. Ghosh, Advocate, according to which the hearing was held on 9.4.2010 and the next date of hearing in the case is 18.6.2010.

ii) W.P. No. 8215(W) of 2008 – Subhas Chandra Basu Vs Union of India.

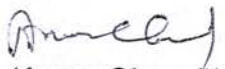
A copy of the letter dated 12.4.2010 (F/B) written by Shri T. K. Ghosh, Advocate was given by Shri G. S. Makkar, according to which the case was last heard on 9.4.2010 and the next date of hearing 18.6.2010. However, the Court has also directed to file Affidavit in Opposition by 21.5.2010. I informed Shri Makkar that para-wise comments of MHA were sent on 2nd April, 2009 and the matter was also followed up both with Ministry of Law as well as with the Advocate but no information has been received as to whether the affidavit has been filed or not. He checked up his records and informed that the para-wise comments received from MHA has already been sent to Shri T. K. Ghosh for further necessary action and the factual position may be ascertained from him. I met Shri T. K. Ghosh, Advocate, Kolkata High Court who informed that

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possibly he has not received the para-wise comments but, however, he would check his records and directed me to contact him at 8.00 PM. I contacted him and he informed that he has not received the para-wise comments from the Law Ministry. He further stated that you may meet me on 14.5.2010 in the Court itself and give a copy of the para-wise comments so that further action in the matter could be taken.

4. I met Shri T. K. Ghosh, Advocate on 14.5.2010 in the Kolkata High Court and handed over him a copy of the para-wise comments of MHA sent on 2nd April, 2009. He also directed me to meet Shri R. N. Das who is Senior Counsel in the case in the afternoon. I met Shri R. N. Das in the afternoon on 14.5.2010 and apprised him of the factual position who desired that a copy of the para-wise comments may also be given to him and also called Shri T. K. Ghosh was discussion. A copy of the para-wise comments was also given to Shri R. N. Das. After discussing the matter, the Advocate stated that he would be taking further time from the Court for filing the affidavit but it should be filed by 7th June, 2010 (from 22nd May to 6th June, 2010 being Court's vacation).

5. The above is submitted for information and further follow up.


(Amar Chand)
US(Legal)
17.5.2010

~~DS(Security)~~

The report submitted by US(Legal) after his visit to Kolkata High Court may be seen. From the report, it is evident that the Govt. Counsels at Kolkata High Court are not taking expeditious action and the follow up by them is also very slow.

2. Two affidavits have been filed on 13.5.2010 and 13/01.5.2010.

3. As regards Writ Petition No.27541 of 2006, the next date of hearing is scheduled to be held on 18.6.2010 at Kolkata High Court. US(Legal) has confirmed that filing of affidavits and other formalities in this case are completed.

4. As regards Writ Petition No.8215 of 2008, though Ministry had furnished the parawise comments as early as on 2.4.2009, the Counsels have not taken any action. US(Legal) has now personally handed over a copy of the parawise comments on 14.5.2010 to them. The Advocate has assured that he shall file the affidavit by 7th June 2010 and would also take extension of time in this case.

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5. It is felt that there is a need for constant follow up of these court cases and US(Coord.) and SO (Coord.) be in close touch with the Counsels so that there is no problem faced in future. The dealing officers may also if required visit Kolkata and brief the Counsels and file the affidavit be fore 7.6.2010.

6. JS(IS.II) may kindly see for orders.

(K. Muralidharan)
Deputy Secretary (S)
18.05.2010

It is ok.
- That is the matter?
- It put up main file also

JS(IS.II)

JS(S)

18/5/10

It put up
By
18/5
Use (K.M.)

19/5/10
So CCd n/

9

Ministry of Home Affairs
IS-II Division

Subject:- Tour Report in respect of visit to Kolkata High Court in the matter of hearing of W.P. No. 2003/2006 – Rudra Jyoti Bhattacharya vs Union of India.

As per the approved orders, the undersigned proceeded to Kolkata in the morning of 8th July 2010 along with Smt. Baljeet Kaur Rekhi, Section Officer and carried documents for handing over to ASG and briefing him in connection with the above case.

2. The ASG fixed the meeting at 5.30 pm for the briefing. Copies of the following papers were handed over to ASG.

(i) Report of the Justice Mukherjee Commission (Vol. I and Vol. II-A & II-B).

(ii) Photocopy of original W.P. No. 2003 of 2006 and affidavit of UOI. Copy of affidavit on ATR and copy of supplementary affidavit.

(iii) Photocopy of WP 27541 of 2006 – Shri Ashim Kumar Ganguly Vs Union of India draft affidavit sent by the Ministry.

(iv) Copy of WP No. 8215 (W) of 2008 Subhash Chandra Bose Vs UOI and parawise comments sent to the Addl. Govt. Advocate / Incharge, Department of Legal affairs Branch Sectt., Kolkata (parawise comments also handed over to Govt. Counsel Shri T.K. Ghosh on 14.5.2010).

3. ASG desired to know the stand of the Govt. of India on the Writ Petitions as to whether GOI was in favour of another commission. It was informed:

(i) Govt. was not in favour of any other commission in the matter.

(ii) That Netaji Subhash Chamdra Bose is dead.

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- 2 -
- (iii) Govt. of India was not incurring any expenditure on the upkeep of ashes preserved at Renkoji Temple at Taihoku, Japan

4. The ASG desired to have the copies of discussions on the report of Justice Mukherjee Commission of Enquiry Report in both houses of Parliament as soon as possible. His junior advocate Sh. Nizamuudin also desired to have one full set of JMCI Report.

5. ASG was informed that parawise commenrts on W.P. No. 8215/2008-Subhash Chandra Basu Vs. UOI were prepared and sent to Smt. S. Bhattacharya, Additional Govt. Advocate/Incharge, Branch Sectt. Kolkata on 2.4.2009 and parawise comments were also handed over to Shri T.K. Ghosh, Government Advocate on 14.5.2010 but affidavit has not been prepared and filed. ASG desired that a strict letter be issued and a copy marked to the Hon'ble Law Minister.

6. ASG also desired that we may remain present in the Court to watch the proceedings. Accordingly, on 9th July, 2010, the case i.e. W.P.No.2003/2006 – Rudra Jyoti Bhattacharya & Ors Vs. UOI &Ors which was at first position in the list in Court No.1 was presided over by Hon'ble Chief Justice Shri J.N. Patel and Justice Shri Bhaskar Bhattacharya. Learned ASG filed both the affidavits. The Hon'ble Court desired, both, the petitioners and the respondents, to file synopsis of the case. The matter is now listed for 23rd July, 2010.

7. In the afternoon, the undersigned met Smt. S. Bhattacharya and brought to her notice that Ministry has not received the affidavit in WP No. 8215/08- Subhash Chandra Basu Vs. Union of India & Ors. The parawise comments had been sent to her on 2.4.2009 and reminders were also sent to her and that Copy of the parawise comments were also handed over to Shri T.K. Ghosh on 14.5.2010 by Shri Amar Chand, Under Secretary, MHA on his visit to Kolkata. Smt, Bhattacharya has now directed Shri Ghosh to prepare affidavit in consultation with ASG and sent the same to this Ministry for affirmation. She has directed the undersigned

~~3.~~

that the draft affidavit may be got typed on green sheet when received, affirmed by the Oath Commissioner, High Court, Delhi and sent to them alongwith 4 copies thereof.

The above is submitted for information.

L.P. Shrivastava
(Smt. L.P. Shrivastava)
US (NSA)
12.7.2010

~~DS (S)~~

Sy
12/7

~~JS (S) 12/7~~

Please chase the matter
and inform me when the
affidavit is received

Pratap
13/7

~~DS (S)~~

1922/DS (S) 1/10
13/7

571/75 (15-11)
13/08/12

19/1/11
2
13/7

H
13/7
SO (cdm).

Ref. FR

This is the Judgement delivered by Hon'ble Justice Ashim Kumar Banerjee and Hon'ble Justice Dr. Mrinal Kant Chaudhuri dated 19.08.2013 disposing all the three Writ Petitions No. 27541 (W) 2006, W.P. No. 2003 of 2006 Shri Rudra Syoti Bhattacharjee & others W.P. No. 8215 (W) of 2008 of Subhas Chandre Bose. No action now part. The file may be closed

BKbhi
24/4/14

US (NSA)

AKB
24/4/14

Pl. take out another copy of the judgement. The R.H.S. is not clear.

US

clear copy placed on file please.

US (NSA)

BKbhi
28/4/14

W (NSA)
25/4/14

US

US

US (NSA)

Bensheed
29/4/14

AKB
29/4/14

8

Parawise comments of Ministry of Home Affairs on WP No.8215(W)/2008 – Shri Subhash Chandra Basu & others Vs. Union of India & others.

1. / No comments as these are matters to be established by the Petitioners before the Hon'ble Court.

2. No comments as these are matters to be established by the petitioners before the Hon'ble Court.

3. The disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the very beginning. The Government of India has, so far, appointed three Committee/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissent^{ing} report. The Government of India accepted the majority report.

4. The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji. Subsequently, a

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writ petition was filed before the Kolkata High Court and a Division Bench by its judgement dated 30th April, 1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose. Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, retired Judge of the Supreme Court on 14th May, 1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

5. ~~JMCI~~ (Justice Mukherjee Commission of Inquiry) ^(JMCI) submitted its report on 8th November, 2005 with the following findings:-

Terms of reference Commission	Conclusion of the
whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged

Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
Whether he has died in any other manner at any other place and, if so, where and how;	In the absence of any clinching evidence a positive answer cannot be given;
If he is alive, in respect of his whereabouts.	Answer already given in (a) above.

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

6. The report of the JMCI was thoroughly examined. It was found that the Commission's inquiry was inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of "clinching evidence". Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple.

The findings of JMCI, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

7. The report of the JMCI was placed before both the Houses of Parliament along with the ATR on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that –

- a) Netaji did not die in the plane crash; and
- b) The ashes in the Renkoji Temple were not of Netaji.

3. This Report is placed before the Houses as required under sub-section 4 of Section 3 of the Commissions of Inquiry Act, 1952".

8. ^{It would be seen that} As ~~such~~ the Government has accepted the ~~majority~~ ^{anti} report and there are no good reasons or evidences to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though ^{the} Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhas Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the

Let the
Committee
Commission

Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

4. No comments as these are matters of records.

5. No comments as these are matters of records.

6. No comments as these are matters of records.

7. The answering respondents want to say that on recommendations of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. A press communiqué announcing the conferment of award was issued by the President's Secretariat on January 22, 1992. In the case of posthumous awards, the award has to be received by the next of kin (NOK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was contacted in this connection, expressed certain reservations on receiving the award as according to her such an honour should have been appropriate in the fifties and felt that one cannot honour Netaji today by awarding the Bharat Ratna to him. She declined to receive the award. Apart from declining of accepting the award by Netaji's daughter, some persons submitted a memorandum to the then President. There was also a lot of criticism in Parliament and the media about the award. The crux and essence of all this was that the award was too late in the day for Netaji and also on the ground that it was not appropriate for the Govt. to announce the award 'posthumously' in the absence of credible evidence of Netaji's death. However, it was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat

through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award is actually conferred by the President during the presentation ceremony. Since the award was declined by the NOK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.

8,9,10,11,12 and 12.1 - No comments as these are matters of records.

13. The answering respondent denies and disputes that the Central Government has rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.5.2006 without assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is further submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they also relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission's, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and

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also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

14. The answering respondent reiterates what has been stated in para 13 above.

14.1 No comments as these are matters of records.

14.2 The answering respondent reiterates what has been stated in para 13 above.

15. The allegation of the petitioners is ~~denied and disputed to the effect~~ that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission

is denied and disputed -
 of Inquiry. It is ~~humbly~~ submitted that JMCI only after examining 434 witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits submitted its report on 8th November, 2005. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committee on the death of Shri Subhash Chandra Bose, refer to the award of Bharat Ratna award (Posthumously) on Netaji and as such, these do not contain any material which have not been made available to the Commission earlier.

16. No comments as these are matters of records.

16.1 No comments as these are matters of records. However, it is stated that Shri Naresh Jaiswal is working in the Ministry of Home Affairs in the capacity of Section Officer.

16.2 No comments as these are statements of fact.

16.3 The answering respondent denies and disputes that the Central Government has rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.5.2006 without any assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash ~~and~~ ^{are} based on non-availability of 'clinging evidence'. It is submitted that Shah Nawaz

This appears repetitive

The answering respondent reiterates what has been stated in para 13 above

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Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission's, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

16.4 The allegation of the petitioner ~~are disputed to the effect that~~ records were not ^{made} ~~been~~ available to the Commission. ^{are in denied -} In fact, in para 2.6 of its Report, the Commission itself has stated that out of 202 (two hundred and two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to this Commission.

16.5 ^{It is submitted that all available records} ~~The available records can be produced before the Hon'ble Court if~~ ^{were produced before the Justice Mukherjee Commission.} ~~so desired.~~ However, there seems to be no need to reappoint or reopen the JMCI.

17. The answering respondent humbly submits that the earlier two Committee/Commission namely Shah Nawaz Committee and Khosla Commission have stated that Netaji Subhash Chandra Bose died in the plane crash at Taihoku Airport on 18th August, 1945. It is also humbly submitted that Government of India also accepted the finding of the said Committee/Commission.

18 & 19. The representation dated 11.3.2008 has not been received in the CDN Section of the IS Division of the Ministry of Home Affairs. In view of what has been stated in reply to 17 above, there is no need for reappointment or reopening of the Mukherjee Commission and the present petition may be dismissed.

20. The answering respondent reiterates what has been stated in para 13 above.

21. The answering respondent reiterates what has been stated in para 13 above.

22. The answering respondent humbly reiterates that inspite of best efforts made by various organs of the Government, no records could be found on the basis of which the then Hon'ble Prime Minister of India late Morarji Desai made the statement on the floor of Parliament on 28th August, 1978.

23. The answering respondent reiterates what has been stated in para 13 above.

24. The answering respondent reiterates what has been stated in para 13 above.

25. The answering respondent submits that the Government of India has accepted the findings of the Shah Nawaz Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18th August, 1945.

26. The answering respondent reiterates what has been stated in para 13 above.

27. The answering respondent reiterates what has been stated in para 13 above.

28. The answering respondent denies that the fundamental rights of the petitioners guaranteed under section 14 & 19(1) of the Constitution of the India have been violated. The answering respondent respectfully submits that the report of Justice Mukherjee Commission of Inquiry was thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash and based on non-availability of 'clinging evidence'. It is submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in

Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission's, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

29. The answering respondent has no comments to offer as it falls within the purview of Hon'ble Court.

30. The answering respondent has no comments to offer as it falls within the purview of Hon'ble Court.

31. The answering respondent has no comments to offer as it falls within the purview of Hon'ble Court.

Prayers:-

It is submitted that the prayers as made by the petitioners may not be allowed as they are devoid of merit or substance.

[Shri Vasant Sathe]

I find sometimes a contradiction in our behaviour. Statutes or portraits are normally unveiled of only those who are no more with us. It is very seldom, except in the South, that a statue is unveiled of a person who is still alive. Normally it is not done. In the present case, on the one hand, we have unveiled the statues and portraits; on the other hand, we are maintaining that he is still alive. I think there is some contradiction which needs reconciliation.

If, for any reason, it is felt that the recommendation or report of the Commission is wrong, throw it out and have another fresh enquiry. In all seriousness, I would submit to Morarjibhai that the only authority on this subject, who can go into it, who can really go to the areas where there is a likelihood of finding Subhas Chandra Bose is Prof. Samar Guha. He has photographs with him. I think, there should be a one-man Commission I am saying it in all humility and seriousness and that should be headed by Prof. Samar Guha. He can take all the assistance, the entire Government machinery can be placed at his disposal and he might even take the assistance of your scientific astrologer. There is substance in astrology and may be that it would help. But if any one can find Netaji Subhas Chandra Bose for us and if on any one's behalf supposing Netaji has taken sanyas, as the Astrologer says, and even then if any one can persuade him to come even in sanyas at least to give darshan to his people, it is only Prof. Samar Guha and nobody else. He has such a devotion and completed identification that you cannot find in anyone else. I would request the hon. Prime Minister, Shri Morarji Desai to appoint a one-man Commission headed by Prof. Samar Guha, give him all the assistance than one can think of. Let him try his best to bring Subhas Chandra Bose to this land.

THE PRIME MINISTER (SHRI MORARJI DESAI): Mr. Chairman, Sir, I may differ sometimes from hon. friend, Mr. Samar Guha, but I can never doubt, even in my sleep, his sincerity. I have great admiration for the dedication with which he is pursuing this cause and yet we have to be realistic in this matter.

There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee of enquiry headed by Shri G. D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed. Some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive. At the same time, Government feels that no useful purpose would be served by having any further inquiry. I hope that in the light of this statement, my hon. friend will withdraw his motion.

PROF. SAMAR GUHA (Contd.): Sir, Today is a great day for the whole Indian people, because a mortal sin, a treacherous crime that was committed against the epic hero of India freedom has been undone. If I say that Netaji was given burial, out of political conspiracy, it would not be an exaggeration. Although there was not an iota of doubt or any positive proof to the contrary that the plane crash was nothing but fake, and the alleged crash did not involve Netaji.

I congratulate the Prime Minister on behalf of the Indian people, the Government as well, for the very bold and courageous steps and the decision that they have taken today. It is not an easy matter to undo the findings of the two Inquiries.

I also congratulate the representatives of all the parties in this House, all of whom, about 25 of them, who spoke in this House on earlier occasions on this resolution and who lent their unanimous support to the demand to undo the Khosla Commission's Report.

I would also remind this House that earlier about 400 members of both the Houses, this House and the other House, had in a joint memorandum urged upon the Government for a fresh inquiry on Netaji on the basis of which the Khosla Commission was set up.

It is a matter of extreme regret that it required three decades for our nation to undo, I would say, the mischief that was done against the revolutionary pilgrime of India. Would there have been the freedom, as you call it, would the British imperialists have quit India so precipitously being the victor of the last War if there had not been a fatal blow by Netaji Subhas Chandra Bose? What now I would say is not my word, but is the word of Lord Attlee who, as a private citizen, came to India. It has been quoted by Shri R. C. Mazumdar in his book, "History of Indian Independence". He was asked "Why did the British quit India so precipitously?". Lord Attlee said: "Because of the activities of Netaji Subhas Chandra Bose".

It is now the accepted fact of history that Mahatma Gandhi prepared the background of Indian freedom and it is Netaji Subhas Chandra Bose who achieved it. But not the freedom as you find today. It is not the freedom of either of the dream of Mahatma Gandhi or Netaji Subhas Chandra Bose.

I am not angry like Mr. D. Dranath Basu or anybody for finding the name of Netaji in Doordarshan on the 15th August. I am very glad that they did mention the name of Netaji on 15th August because anybody the real meaning of the Independence that we achieved on the 15th would not mind it. At least, I attend any function anywhere for even a day on the 15th August may be, personally, to me, it is of national betrayal. I remember Mahatma Gandhi, remained at Balighata, at the mid-night August and he did not bless, even send a message of congratulations on this kind of Independence that we achieved. Therefore, not at all worried about it. I think that his name was not mentioned on the 15th August because his should be mentioned either January or 21st October, the day which Netaji declared the Proclamation of Government of India and the war of Indian liberation against British imperialists.

Today, I express my gratitude to Prime Minister because today he has crusade that in my humble way trying to conduct on behalf of people of India at least to officially and legally Netaji declared dead. How, by the findings of the two Reports, this much we have achieved today, Netaji is neither legally nor officially dead.

What happened to him? there will be any useful served by having a fresh enquiry. It is not a question which I will later. But I want to draw attention of the Prime Minister to that what has been done by Government has been done by himself. He himself republished his own findings in a recent Calcutta. There was the report of Khosla Commission and, the publication of this published a book called 'Days of Netaji'. This is r

Sr No. 11/R

SPEED POST

MOLE - No

592

Home/08/11

1625/327

(IN ALL CORRESPONDENCE THIS FILE NO. AND CAUSE TITLE MAY CLEARLY BE GIVEN)

दूरभाष 22484806

Telephone

फैक्स 22485215

Fax

विधि एवं न्याय मंत्रालय

MINISTRY OF LAW AND JUSTICE

विधि कार्य विभाग

DEPT. OF LEGAL AFFAIRS

शारदा सचिवालय, कोलकाता

BR. SECIT, Kolkata

11, स्टैंड रोड, कोलकाता- 700001

11, Strand Road Kolkata-700001

Date-10-6-08

प्रमाणित

To,

Mr S.K. Malhotra
Dy Secy
Ministry of Home Affairs
IS Division Cdn Section
9th floor, Loka Nayak Bhawan
Khan Market
New Delhi-3

किया

(Sub)

WPNO - 8215 W 108
Sri Subhash Chandra Basu & Co
- vs -
U.O.T. & Ors

महोदय/महोदया

Sir/Madam,

सूचित किया जाता है कि श्री श्रीमती जे. के. घोष के (वार एसोसिएशन, कमरा सं) 2 उच्च न्यायालय, कोलकाता, दूरभाष 9433506066 अश्लेष मामले में अभिलेख अधिकता के रूप में नियुक्त किया जाता है।

श्री श्रीमती जार्ज एन हाथ (वार एसोसिएशन, कमरा सं) 5 उच्च न्यायालय, कोलकाता, दूरभाष अश्लेष मामले में उनके सीनियर होंगे।

(Please note that Sri/Smt T.K. Ghosh Bar Assn. with Sri/Smt. (Bar Assn. Room No. 2 Room No. _____ High Court, Calcutta, Telephone No. 9433506066 has been engaged in the aforesaid matter as Advocate on Record High Court, With Sri/Smt. R.N. Das Spl (Bar Assn. Room No. 5 Calcutta, Telephone No. 24220575 as his/her senior.

महोदय से संकेत दिया जा रहा है कि श्री श्रीमती जे. के. घोष के (वार एसोसिएशन, कमरा सं) 2 उच्च न्यायालय, कोलकाता, दूरभाष 9433506066 अश्लेष मामले में अभिलेख अधिकता के रूप में नियुक्त किया जाता है।

an Oble pl

Contd2....

10/6/08

16/6

16/6

10/6

2) 22
-2-
You are requested to depute conversant officer with all relevant documents of the case and furnish Parawise comments, brief history and necessary instruction etc. for drawing Affidavit-in-Opposition/Reply/Application/Appeal Etc. to contact this Ministry and counsel engaged to do the needful and keep this office posted with the current development of the case from time to time.

वकालतनामा, शापथ-पत्र आदि दायर करने हेतु आसंगिक खर्च अधिवक्ता को भुगतान किया जाए.

Incidental costs may be paid to the Advocate-on-Record for filing Vakalatnama and Affidavit in Opposition etc.

पत्र का प्रारंभ के तुरंत बाद भारत सरकार के संबंधित विभाग द्वारा हस्ताक्षरित वकालतनामा अतिरिक्त प्रस्तुत किया जाए.

Duly signed Vakalatnama by the concerned department of UOI may be furnished immediately after receipt of this letter.

महोदय - गणपति

Encl:- As above WPN - 8215 W/08

Copy to:- Principal Secy.
Govt of India
Office of Prime
Minister at 7 Race Course Rd
New Delhi - 110003

आपका विश्वासी

10/6/08
(जी० एस० मक्कड़)

का के० सरकारी अधिवक्ता

23 (8)

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. NO. 8215 (W) OF 2008

Subject matter relating to :

"PUBLIC INTEREST LITIGATION"

Under Group - IX, Head ____, of the
Classification List.

CAUSE TITLE

SRI SUBHASH CHANDRA BASU & ANR.
..... PETITIONER

-VERSUS-

UNION OF INDIA & ORS.

..... RESPONDENTS

ON-RECORD

SUBHASH CHANDRA BASU
Petitioner-in-Person
Bar Association Room No.12
High Court, Calcutta.

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DISTRICT : HOWRAH

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P. No. 8215 (W) of 2008

IN THE MATTER OF :

**SRI SUBHASH CHANDRA BASU &
ANR.**

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

INDEX

Sl. No.	Particulars of Documents	Annexure	Pages
1.	List of Dates		
2.	Points of Law involved		
3.	Writ Petition with Affidavit		
4.	Xerox Copy of the Order dated 04.08.1997 reported in AIR 1997 SC 3019.	"P-1"	
5.	Xerox Copy of the Order dated 30.04.1998 reported in 1999 Calcutta 9.	"P-2"	
6.	Xerox copy of the Notification No.S.O. 339(E) dated 14.05.1999 for appointment of Mukherjee Commission.	"P-3"	
7.	Xerox copy of the finding and/or conclusion of Mukherjee Commission's Report dated 07.11.2005.	"P-4"	
8.	Xerox copy of the Order of rejection of the conclusion/finding of Mukherjee Commission's report dated 17.05.2006.	"P-5"	
9.	Xerox copy of the news papers reports cutting dated 20.02.2008 and 27.03.2008. collectively.	"P-6" collect.	
10.	Xerox copy of the Order dated 15.02.2005 passed in W.P. No.27541 (W) of 2006 by the Hon'ble Division Bench, High Court, Calcutta.	"P-7"	
11.	Xerox copy of the representation dated 11.03.2008 sent by the petitioners.	"P-8"	

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P. No. 8215 (W) of 2008

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

LIST OF DATES

<u>Sl. No.</u>	<u>Date</u>	<u>Events</u>
01.	23.01.1897	: Netaji Subhas Chandra Bose was born.
02.	18.08.1945	: Netaji allegedly died in plane crash in Taihoku.
03.	05.04.1956	: Shah Nawaz Khan Committee was appointed Vide Notification No.F-30(26)FEA/55 to inquire into alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945.
04.	11.07.1970	: Khosla Inquiry Commission was constituted Vide Notification No.25/14/70-Poll- to enquire into the alleged disappearance and/or death of Netaji in 1945.
05.	03.09.1974	: Khosla Inquiry Commission's report was laid on the table of parliament (Lok Sabha).
06.	28.08.1978	: The then Prime Minister Morarji Desai made the statement on the floor of parliament that the earlier conclusion reports of Shah Nawaz Committee and Khosla Commission of Inquiry are not decisive.

(ii)

07.	1993	:	Writ Petition being C.O. No.6720 of 1993 was filed in the High Court, Calcutta challenging the press communiqué for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose posthumously.
08.	1994	:	The said Writ Petition was transferred as Transfer Case (C) No.7 of 1994 to the Hon'ble Supreme Court of India.
09.	04.08.1997	:	The Writ Petition was disposed of with a direction to cancel the said Press-Communiqué for conferment of Bharat Ratna Award of Netaji Subhas Chandra Bose posthumously.
10.	1998	:	A Writ Petition being W.P. No.281 of 1998 was further filed before this Hon'ble Court seeking for a direction for constituting a Commission of Inquiry to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
11.	30.04.1998	:	The said Writ Petition was disposed of with a direction upon the Union of India to constitute Commission of Inquiry to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
12.	28.12.1998	:	A unanimous resolution adopted in West Bengal Legislative Assembly demanding for Constituting a Commission of Inquiry into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.

(iii)

13.	14.05.1999	:	Mukherjee Commission was appointed Vide Notification No.S.O. 339 (E3) by virtue of order of the Hon'ble Divisional Bench, High Court, Calcutta as a special case to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
14.	07.11.2005	:	Mukherjee Commission's Report was concluded.
15.	08.11.2005	:	Mukherjee Commission's Report was submitted before the Central Government.
16.	17.05.2006	:	Mukherjee Commission's Report and the Action Taken Report (A.T.R.) were table before the Parliament by the Central Government and rejected the said Report.
17.	2006	:	A Writ Petition being W.P. No.27541 (W) of 2006 was filed by the petitioner No.1 for stopping all sorts of expenditure for upkeep and maintenance of alleged ashes of Netaji kept in Renkoji Temple in Japan.
18.	20.02.2008 27.03.2008	:	News published in Bartaman and Andabazar Patrika relating to 29 Nos. of Secret and Top Secret files of Netaji's death and I.N.S. Treasurer exposed to public by the order of Central Information Commission.
19.	11.03.2008	:	The representations were sent to different concerned authorities seeking for reappointment of Mukherjee Commission.

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P. No. (W) of 2008

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

POINTS OF LAW

1. Whether the Central Government has got any right to unilaterally cancel or reject the Mukherjee Commission report dated 18.05.2006 when the Commission was constituted by the direction of the Writ Court under high Prerogative Writ of the Hon'ble Division Bench, High Court, Calcutta and when the name of Chairman of Commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India ?.
2. Whether for greater Public Interest the reappointment or reopening of Mukherjee Commission is required for completion of inquiry in view of earlier terms of reference of appointment under clause No.2(d), (e) and for publication of News touching Netaji's alleged death or disappearance in 1945 ?.
3. Whether it is necessary to complete or cover the most vital left out points of the earlier terms of reference of appointment No.2(d), (e) and for publication of News of Netaji's alleged death ?

4. Whether the Commission is entitled to get all sorts of classified documents and files relating to Netaji's alleged death or disappearance in 1945 for the purpose of proper inquiry in the matter of Great Public Importance ?
5. Whether in any view Mukherjee Commission is required to be reappointment or reopening in order to remove controversy and/or to bring an end regarding Netaji alleged death or disappearance in 1945 as alleged ?
6. Whether after appointment Mukherjee Commission in 1999 the earlier Committees report in 1956 and the Khosla Commissioner's report 1974 have automatically become invalid and/or redundant?
7. Whether even after the then Prime Minister's statement in the Lok Sabha in 1978 the value or wait-age of earlier committee's report and commission's report had completely lost or became null and void in the eye of law ?
8. Whether the non-supply of document/file/record relating to alleged death or disappearance of Netaji in 1945 before the Commission had caused or resulted the Commission not to give answer in respect of clause No.(d) of the terms of reference of appointment of Mukherjee Commission in 1999 ?
9. Whether the Central Government earlier stand of the Committee's and Commission's report are contradictory to the opinion Commission for the third time for the same matter in the year; 1999 ?

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

W.P. NO. (W) OF 2008.

IN THE MATTER OF :

An application under Article 226 of
the Constitution of India;

-And-

IN THE MATTER OF :

A writ or writs in the nature of
Mandamus;

-And-

IN THE MATTER OF :

A writ or writs in the nature of
Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of
Mukherjee Commission for

completion of Inquiry into the matter of alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945 and/or continue further enquiry to find out the date of death of Netaji Subhas Chandra Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2.(d) - Whether he has died in any other manner at any other place and, if so, when and how," of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

IN THE MATTER OF :

The Evidence Act, 1872;

-And-

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights
enshrined under Article 14, 19(1) of
the Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

IN THE MATTER OF :

Non-Consideration of the
representation dated 11.03.2008
sent by the petitioner to the
concerned authorities;

-And-

IN THE MATTER OF :

1. SRI SUBHASH CHANDRA BASU,
Son of Late Surendra Nath Basu,

residing at 86, Sadar Boxi Lane,
Post Office, Police Station and
District - Howrah, Pin - 711101;

2. **SRI PANKAJ HALDER,**

son of Sri Late Arabinda Halder,
residing at Village - Mathurapur,
Post Office and Police Station -
Mathurapur, District - South 24-
Parganas.

... PETITIONERS.

-Versus-

1. **UNION OF INDIA,**

service through the Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi - 110001;

2. **PRINCIPAL SECRETARY,**

Government of India, Office of Prime
Minister at 7, Race Course Road,
New Delhi - 110003;

3. SECRETARY,

Ministry of Foreign Affairs,
Government of India, South Block,
New Delhi - 110001.

4. SECRETARY,

Ministry of Parliament Affairs,
Government of India, New Delhi-
110001.

..... RESPONDENTS

To

The Hon'ble Surinder Singh Nijjar, Chief Justice and His Companion
Justices of this Hon'ble Court;

The humble petition of the
petitioners above-named;

MOST RESPECTFULLY SHEWETH :

1. That the petitioners are the citizens of India having their
permanent residences mentioned in the Cause Title.

2. That the petitioner is No.1, is the lawyer of this Hon'ble High Court
and he is the social worker and involved in different social and other

activities in the district of Howrah. Furthermore, the Petitioner No.1 along with another petitioner filed a Writ Petition before the Hon'ble Supreme Court of India concerning the entire civic rights and pollution matter of Howrah against the State of West Bengal and Howrah Municipal Corporation for not discharging their bounden duties and/or providing civil amenities to the people of Howrah. The Writ petition being Writ Petition (Civil) No.380 of 1995 was finally disposed of on 16.04.1996 with a direction to the Hon'ble the then Chief Justice of the High Court, Calcutta to constitute a Bench to hear all the matter of the said Writ Petition including other pollution and environment matter of the West Bengal. By virtue of the order of the Hon'ble Supreme Court of India, the Environmental Bench, which is popularly known as Green Bench, was constituted. Beside above, the petitioner No.1 as co-petitioner filed other Public Interest Litigations concerning Calcutta Maidan, Victoria Memorail Hall, Shibpur Botanical Garden, Transport and Howrah Hat and other under the name and style of an organization as "Howrah Ganatantrik Nagarik Samity", which is a non-party organization of the citizens of Howrah.

So for as the petitioner No.2 is concerned, he is also a practicing advocate of this Hon'ble High Court, and he is envolved in different social works and other philanthropic activities in the area of Mathurapur and adjoining area.

3. That the petitioner states that after mysterious disappearance of Netaji Subhas Chandra Bose in 1945 he has not come back, or was not found him thereafter on the Indian soil. The people of India is ~~inter~~ indebted to him for his great role and gallant deeds of Azad Hind Fouz (I.N.A.) for Indian Independence. The Indian Independence had been snatched away from British Raj after a lot of scarifies and shedding of much blood of Indian People. As soon as the name of Netaji is heard, the Indian People not only bow down their heads with great respect from the core of their hearts where they had left their vacant place to enthrone none else Netaji but also their inquisitive mind, want to know the ultimate fate of their beloved leader great National Hero having international name and fame. In response to carion call and to unchain the motherland from the course of dependence Netaji came out of his Elgin Road's House on 17.01.1941 by throwing dust in the eyes of British Police and sprung into the struggle for Indian freedom. His relentless efforts and mysterious journey from India to Japan and launching movement for Indian freedom therefrom and formation of Azad Hind Fouz for Indian movement and his love and patriotism for India their dedication and their march to Delhi have become baland and/or mith to the people of Indian. Though Netaji and His Azad Hind Fouz could not bring the Indian Independence, but due to his movement the Himalayan

foundation of the British Raj had been shaken and had quicken the Britishers to leave India and/or to transfer the power to the Indians. Therefore, Netaji has become the concerned for all and not simply confined to particular family, or region or geographic limit. Furthermore, the movement of Netaji and his Azad Hind Fouz were not only for Indian Independence but also for the struggle for Indo-Pack sub-continent and thus, the people of the Indo-Pack sub-continent still remember Netaji, their National Hero or their beloved leader of Independence with great respect. The people have enthroned him in their core of hearts due to his insurmountable patriotism, love for the motherland, unparallel and towering personality, which made him so dear and near to the people at large of our country. It may not be out of place to mention here that the people of the aforesaid region are indebted to Netaji for independence. His movement for independence still encourages the freedom-lovers of the different parts of the world. Therefore, being Indians the petitioners consider it as ~~one~~ of their solemn duty to find out their National Hero and to unearth the place of death, if he has died, and where and how has died and unless the said uppermost question is resolved and/or divulged to all, the people of India and the petitioners shall be constrained to do their endeavor or efforts to unearth the hidden truth behind the said mysterious disappearance or alleged death of Netaji Subhas Chandra

Bose. The petitioners as citizens and lawyers consider it as their rights to know about their National Hero and the aforesaid question and the authorities are duty bound to appraise the people of India as to the real truth behind it and to put a permanent end to the said controversy.

4. That since after alleged disappearance of Netaji Subhas Chandra Bose in 1945, he did not come back to the Indian soil, and since there was an uproar and resentment over the news of alleged death of Netaji in Plane Crash in Taihoku, Japan and since the said issue had stricken again and again the minds of the people and the then Prime Minister Jaharlal Neharu and His Ministry, ultimately a three members Inquiry Committee vide its Notification No.F-30(26)FEA/55 dated April 5, 1956 was appointed by the Government of India. The majority report, which held that Netaji died in the aforesaid plane crash, was accepted by the Government of India. The said Committee was constituted under the Chairmanship of Shah Nawaz Khan, Parliamentary Secretary to the Ministry of Transport and Railway, and Shri Suresh Chandra Bose, elder brother of Netaji Subhas Chandra Bose and Shri S.N. Maitra, I.C.S., Chief Commissioner, Andaman and Nicobar Islands, as its members. After considering the evidence collected by the Committee, two of them (Shri Shah Nawaz Khan and Sri S.N. Maitra) came to the conclusion that

Netaji had died in the aforesaid plane crash. Shri Suresh Chandra Bose, the other member and elder brother of Netaji, submitted a dissentient report stating that there had been no plane crash involving Netaji's death. The majority report was accepted by the Government of India.

5. That the said majority view of that Committee, however, did not satisfy the public in general and several members of the Parliament in particular, who raised a demand for fresh Inquiry into the matter. Under the circumstances, the Government of India, in exercise its powers under The Commissions of Inquiry Act, 1952 constituted an Inquiry Commission Vide its Notification No.25/14/70-Poll. dated 11.07.1970 headed by Shri G.D. Khosla, Retired Chief Justice of Punjab High Court. The Commission was asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945. That commission examined some of the witness including Shri Shas Nawaz Khan and Shri Suresh Chandra Bose. That commission came to the conclusion that Netaji had succumbed to his injuries sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo. The findings of the Kholsa Commission also did not end the controversy surrounding Netaji's death. Several important people and personalities including some members of Netaji's family, Sri Samar Guha, Ex-MP and others did not accept the findings of the Khosla Commission. Since then, there had been a wide spread feeling amongst

the people that the issue or truth about Netaji's alleged disappearance/death still remained unsolved and there was a consistent demand for another inquiry into the matter. Therefore, the findings of Khosla Commission could not bring the end of controversy surroundings Netaji's death.

6. That thereafter the Report (1974) of Khosla Commission of Inquiry into the disappearance of Netaji Subhash Chandra Bose laid on the Table of the Parliament (Lok Sabha) on 03.09.1974 and in reply thereto Sri Morarji Deasi, the then Prime Minister of India, made the following statements on the floor on 28.08.1978 which were recorded at Page 455 and 456^b parliamentary proceedings :-

"There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August, 1945 at Taihoku air-field during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee (sic) of enquiry headed by Shri G.D. Khosla, retired Judge of the Punjab High Court. The majority report of the first committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of

witnesses have been noticed, some further contemporary officials documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive."

7. That thereafter a Writ Petition being C.O. No.6720 of 1993 was filed by one of the lawyer in the High Court, Calcutta and the same was transferred to the Hon'ble Supreme Court of India, as Transfer case (C) NO. 7 of 1994 challenging the press communiqué of Government of India for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose posthumously and the Hon'ble Supreme ^{Court} by order dated 04.08.1997, which was letter on reported in AIR 1997 Supreme Court, 3019 (Union of India- Versus - Bijan Ghosh), cancelled the said Press Communiqué as the Union of India by affidavit stated that no further steps were taken for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose. The Union of India, thus, retreated from their stand as to the death of Netaji and/or conferment of Bharat Ratna Award posthumously.

The Xerox copy of the said order dated 04.08.1997, which was later on reported in AIR 1997 SC 3019, is enclosed herewith and marked as Annexure -P/-1 to the Writ Petition.

8. That thereafter another Writ Petition being W.P. No. 281 of 1998 (Rudra Jyoti Bhattacharya - Versus - Union of India.), which was latter on reported in AIR 1999 CALCUTTA 9, was filed in the Hon'ble High Court, Calcutta seeking for direction upon the Government of India to Constitute a commission of Inquiry to launch a vigorous inquiry into the alleged disappearances or death of Netaji Subhas Chandra Bose and by order dated 30.04.1998 the Hon'ble Division Bench presided over by the Hon'ble Justice Prabha Shankar Mishra, the Chief Justice and the Hon'ble Justice B. Bhattacharya issuing high prerogative Writ directed the Union of India to launch an in-depth inquiry on the following points by appointing a commission of Inquiry as a Special case for the purpose of putting a permanent end to the controversy:-

- a) Whether Netaji Subhas Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the place crash, as alleged;
- c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- d) Whether he has died in any other manner at any other place and if so, when and how;
- e) If he is alive, in respect of his whereabouts,

The Xerox copy of the order dated 30.04.1998, which was reported in AIR 1999 CALCUTTA 9 is enclosed herewith and marked as Annexure -P/-2 to the petition.

9. That thereafter by a unanimous resolution adopted by the West Bengal legislative Assembly on 28.12.1998 demanded that the Government of India should make necessary arrangement for availability of records and documents in and outside India so that the scholars and people could have access them and also constitute a fresh inquiry commission to remove the controversy and/or mystery regarding the whereabouts of Netaji Subhas Chandra Bose.

10. That after the said unanimous resolution, the Government of India was of the opinion that it was necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance namely, the disappearance of Netaji Subhas Chandra Bose in 1945 and the Central Government by Notification No. S.O. 339 (E3) dated 14.05.1999, thus, appointed a one-man Commission of Inquiry consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Hon'ble Supreme Court of India and this Commission shall enquire into the all facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- a) Whether Netaji Subhas Chandra Bose is dead or alive;
- b) If he is dead, whether he died in the place crash, as alleged;

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- c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- d) Whether he has died in any other manner at any other place and if so, when and how;
- e) If he is alive, in respect of his whereabouts,

The Xerox copy of the said Notification No. S.O. 339(E) dated 14.05.1999 is enclosed herewith and marked as Annexure - P-3 to the Writ Petition.

11. That the said Commission of Inquiry shall also examine the manner in which the exercise of scrutiny of publication touching the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.

12. That Mukherjee Commission had examined 131 Nos. of Witnesses and enclosed 308 Nos. of Exhibited documents to the Report and had gone through other related documents or records and visited various probable place of death in India and abroad such as (i) Death in Red Fort, (ii) Death in plane crash; (iii) Death in Dehradun; (iv) Death in Sheopukalan and (v) Death in Faizabad and also visited different foreign Countries and ultimately came to the following conclusion and/or finding on 07.11.2005:-

- a) Netaji Subhas Chandra Bose is dead;

- b) He did not die in Plane crash as alleged;
- c) The ashes in Japanese Temple are not of Netaji;
- d) In absence of any clinching evidence a positive answer can not be given and;
- e) Answer already given in (a) above;

12.1. In the matter of publication touching upon the death of or otherwise of Netaji, Mukherjee Commission opined/suggested that the Central Government can proceed on the basis that he is dead but did not die in the Plane crash as alleged. The said report was submitted before the Government of India on 08.11.2005.

The Xerox copy of the finding and/or conclusion of Mukherjee Commission's Report dated 07.11.2005 is enclosed herewith and marked as Annexure - P/-4 to the Writ Petition.

13. That Mukherjee Commission report was tabled in the Parliament on 17.05.2006 and the Central Government had rejected the finding of Commission on 17.05.2006 without assigning any reason for rejection. For the Mukherjee Commission for a period of 6 years 7 months from 14.05.1999 to 07.11.2005, a huge public money was spent from the public exchequer. Since the matter^{is} involved in great public importance and since the Commission was appointed to unearth the truth of alleged disappearance and/or death of our National Hero and beloved leader

Netaji Subhas Chandra Bose, the people of India never raise any question over such expenditure, rather they are wholeheartedly and eagerly waited for a suitable and reasonable answer and/or conclusion of the said above issues or quires in terms of reference No. 2(d) of the said Commission but Mukherjee Commission in its finding dated 07.11.2005 failed to make any firm and/or concrete finding as to where, when and how Netaji has died. As a result of such finding the said controversy as to alleged disappearance or death of Netaji in 1945 did not bring its permanent end and still surviving and/or subsisting.

The Xerox copy of the order of rejection dated 17.05.2006, which was collected from the website, is enclosed herewith and marked as **Annexure P/-5** to the Writ Petition.

14. That the said controversy surrounding alleged disappearance and/or death of Netaji Subhas Chandra Bose could not bring an end and said controversy rather increased and remain unsolved when the Mukherjee Commission report tabled before the Parliament on 17.05.2006 and the Central Government by the Action Taken Report (ATR) rejected the said report without assigning any reason. The Central Government remained silent quite for a long time as to the reason for such cancellation of Mukherjee Commission's report on 17.05.2006 although there was constant and/or insisting demand from the public at large to know the reason of such cancellation or rejection.

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14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, if appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard.

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5th of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal,

without mentioning the name of department to which he was attached swore the affidavit and the said official stated in paragraph No. 8 and 9 of the said Affidavit as follows:-

"8. With regard to the statement made in paragraphs 8 of the writ petition, it is submitted that the report of the Justice Mukherjee Commission was examined thoroughly and it was observed that Commission's inquiry was inconclusive in many ways, unable to provide a definitive finding on several issues and at variance with past well accepted inquiry Commission's finding ~~on several issues~~ and at variance with past well accepted inquiry Commission's findings in some critical areas: It is further submitted that Justice Mukherjee Commission did not provide any finding on point at Sub-para (d) of terms of reference mentioned in reply to para 6 above. Thus, Government of India did not find it possible to accept the findings of the Justice Mukherjee Commission that a) Netaji did not die in the plane crash; and b) the ashes in the Renkoji Temple were not of Netaji and it has accordingly been reflected in the Action Taken Report laid before the House of Parliament."

"9. With regard to the statement made in paragraphs 9 of the writ petition, it is reiterated that Government of India was not able to accept the report of the Justice Mukherjee Commission

inasmuch as the inquiry was found to be inconclusive in many ways and it had not been able to provide definite findings on several issues as mentioned in reply to Para 8 above. It is further submitted that though the Justice Mukherjee Commission concluded that Netaji was dead but he did not die in plane crash, the Commission did not answer the point (d) of terms of reference which required the Commission to find out "Whether he has died in any other manner at any other place and, if so, when and how. The commission on point(d) only said that in the absence of any clinching evidence a positive answer cannot be given. It is denied that Government of India had any control and supervision on the working of earlier Committee and Commission. It is submitted that the earlier Committee and Commission inquired into the matter independently and came out with their own independent findings. It is submitted that like the Justice Mukherjee Commission, Khosla Commission was also appointed under the Commissions of Inquiry Act, 1952. It is further submitted that although Shah Nawaz Committee could not visit Formosa as India had no diplomatic relations with that country at that time, Khosla Commission visited Taiwan (formerly known as Formosa) in connection with the inquiry and this has been recorded in chapter Eight of its report".

16.2. From the statements made by the Official of the Respondents in the above Paragraphs No. 8 and 9 of the said Affidavit-in-opposition, it is evident that for the first reason the Government of India did not find it possible to accept the finding the Justice Mukherjee Commission Report since the inquiry was inconclusive in many ways and did not provide any finding on the point of sub-para (d) of the terms of reference of Commission and further Mukherjee Commission did not answer the point (d) of terms of reference which required the Commission to find out whether he has died in any other manner at any other place and if so, when and how. The Commission on point(d) only said in absence of any clinching evidence a positive answer can not be given.

16.3. From the statements of the said Affidavit-in-Opposition it revealed that the Mukherjee Commission's report was rejected by the Central Government because of second reason that it was at variance with past well accepted inquiry commission's findings on several issued and at variance with past well accepted inquiry commission's findings in some critical areas. This second reason is not sustainable for holding Mukherjee Commission to enquire same earlier matter for the third time.

✓ 16.4 The Central Government has come with one of the reasons for rejection of Mukherjee Commission report dated 17.05.2006 is that said report did not answer of clause (d) of the terms of reference of the

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appointment but from the commission report dated 07.11.2005 it revealed that commission was not assisted or rendered co-operation by supplying materials records or files relating to alleged death or disappearance of Netaji before the commission. The commission called for the files being File No.12(226)/56-PM (investigation into the circumstances leading to the death of Subhas Chandra Bose) from the (1) Cabinet Secretariat, (2) Intelligence Bureau and (3) Research and Analysis Wing but none of the said departments supplied any file/document/record concerning Netaji's alleged death or disappearance in 1945 though the Director of Prime Minister's Office by letter dated 04.07.2000 (as per Mukherjee Commission's report) asserted that the "File No.12(226)/56-PM which contained agenda paper/cabinet decision regarding-investigation into the circumstances leading to the death of Shri Subhas Chandra Bose was destroyed in 1972 in course of routine review/weeding of old record **since records of cabinet proceeding are kept permanently in Cabinet Secretariat from where they may be procured**". There was shifting of responsibilities from one department to another department but no records/file/document was ultimately transmitted before Mukherjee Commission and even the contemporary record/file/document based on which the then Prime Minister Morarji Desai made the statements in Lok Sabha in 1978 that earlier

committee's and commission's report were not decisive were not supplied or transmitted to the Commission. Therefore, the Mukherjee Commission failed to answer under clause (d) of the terms of reference of appointment in 1999. The said difficulty has been removed and bright possibilities to access and availability of record have been reopened by the order of Central Information Commissioner.

✓ 16.5 Since the Central Government was not earlier directed to make all assistance to the Commission by supplying all files/documents/records including "Secret" and "Top-Secret" file at the time of Commission's inquiry, the Central Government withheld all documents/file/records relating to alleged death or disappearance of Netaji in 1945 before the Commission under the garb or veil of security of the nation and that to without filing any affidavit claiming privilege under section 123 and 162 of the Evidence Act, 1872. Therefore, all such documents are required to be produced before this Hon'ble Court and also before Commission in case of reopening or reappointing of the said commission.

" / Since, ^{the petitioners} did not annex voluminous Mukherjee Commission report to the writ petition, the petitioners crave leave to produce the relevant portion of the said ~~report~~ before this Hon'ble Court at the time of hearing if the Hon'ble Court so desire.

The Xerox copy of the said order dated 15.02.2005 passed in W.P. No.27541 (W) of 2006 is enclosed herewith and marked as Annexure P/-7 to the Petition.

17. That the suggestion or decision of the Mukherjee Commission with regards to publication touching upon the death of or otherwise of Netaji is that the Central Government can proceed on ~~to~~ ^{the} basis that Netaji is dead but did not die in Plane Crash. This suggestion and/or decision might have not been accepted by the Central Government in view of stand taken by the said Government in respect of term of reference Point No.2(d) of the appointment of Mukherjee Commission and as a result such wrong publication of death, place and how died shall be continued which ~~not~~ ^{shall} only cause serious repercussion in the sentiment or minds of the public and this unwarranted situation can not be allowed to prolong any further.

18. That the petitioners sent representation dated 11.03.2008 addressed to different concerned authorities of Central Government and sought for reappointment or reopening of the Mukherjee Commission for competition of inquiry into disappearance and/or alleged death of Netaji Subhas Chandra Bose in 1945 but till date no reply is discernible from their end or any of the concerned authorities.

The Xerox copy of the said representation dated 11.03.2008 is enclosed herewith and marked as Annexure - P/- 8 to the Writ Petition.

19. That being aggrieved by and dissatisfied with the inaction and/or absolute silence to act upon the representation dated 11.03.2008 sent by

the petitioners for reappointing Mukherjee Commission to unearth the truth behind disappearance and/or alleged death of Netaji Subhas Chandra Bose, the petitioners beg to move this Writ Petition on the following amongst other.

GROUND

- I. For that Mukherjee Commission was appointed on 14.05.1999 by the Central Government to make a Vigorous Inquiry into the alleged death or disappearance of Netaji in 1945 in terms of reference of appointment of the said commission but after submission of report on 07.11.2005 nothing was found as to date of death and how, when and where he has died if he is dead;
- II. For that Mukherjee Commission suggested as to publication touching the alleged death or disappearance of Netaji that the Central Government can proceed on the basis that Netaji has died but not in plane crash and such presumption and/or assumption of alleged death instead of bringing the controversy into an end, it remain or left never ending among the public at large;
- III. For that the Central Government did not accept the report of Mukherjee Commission since commission did not answer the point No.(d) of the terms of reference of appointment dated 14.05.1999,

for which the said commission is required to be reappointed to complete the commission to answer the left out point No.(d) and (e) and with regard to such publication;

- IV. For that order of rejection of the Mukherjee Commission Report on 17.05.2006 by Central Government is absolutely bad in law and liable to be set aside;
- V. For that since Mukherjee Commission was constituted by the direction of the Writ Court under High prerogative writ issued by the Hon'ble Division Bench of the Hon'ble High, Calcutta as a special case, and the name of the Chairman of the commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India, the Central Government has got no right to unilaterally cancel or reject the findings of the commission;
- VI. For that the earlier committee and commission were constituted at the instance of Central Government but Mukherjee Commission was constituted by judicial intervention and thus, it has got^a special wait-age but also having a peculiarity in respect of formation over which the Central Government can not exercise his absolute power to reject it;
- VII. For that after submission of said report the Central Government can lay the report with Action Taken Report (A.T.R.) before the

parliament expressing their opinion whether the Government desire to act upon the report or not but the Central Government in no circumstance can reject the report of said commission in any manner whatsoever; thus, the rejection order is de hors in the eye of law; and to be set aside or quashed;

- VIII. For that considering the matter of great public importance Mukherjee Commission was constituted to bring an end of controversy relating to alleged death or disappearance of Netaji in 1945 and huge money was spent for the same, it is, thus, required to complete commission in respect of left out points such^{as} No.(d) and (e) and publication of news of alleged death of Netaji, in terms of reference forthwith;
- IX. For that since it is the great public importance, the wrong publication of news of alleged death of Netaji should not be continued and such continuation shall carry a wrong message to the new generation and public at large;
- X. For that since Netaji is not confined to any particular family, or region and since he is our Great National Hero of Independence and beloved leader of our motherland or country, everybody including the petitioners have got right to set right the commission and to have judicial intervention for the same;

- XI. For that the Mukherjee Commissioner failed to answer under Clause (d) and (e) of the terms of reference due to non supply of documents/files and/or records by the Central Government before Mukherjee Commission for which the interference of the Writ court is necessary;
- XII. For that the Central Government by virtue of provision under Section 3(4) of the Commission of Inquiry Act, 1952, the Central Government can not exercise arbitrary and whimsical power to reject the report and exercise of such unfettered power is wholly illegal and without jurisdiction too;
- XIII. For that by rejection of Mukherjee Commission report arbitrarily the Central Government has violated the fundamental rights enshrined under Article 14 and 19(1) of the Constitution of India;
- XIV. For that the reasons of rejection of Mukherjee Commission report have been supplied in connection with another Writ Petition being W.P. No.27541 (W) of 2006 in Paragraph No.8 and 9 of the Affidavit-in-Opposition affirmed on 5th March, 2008 by a principal officer of the respondent after a long time of its submission and thus, it is afterthought and suffers from gross illegality;
- XV. For that when the Central Government in spite of earlier committee's and commission's reports held conclusive and well

accepted, was of the opinion that Commission for the third time necessary in 1999 for the same matter and in such situation the Central Government can not embrace or clutch the earlier reports after holding Mukherjee Commission;

XVI. For that in any view of the above matter the rejection of Mukherjee Commission Report is not in accordance with law and reappointment^{of} commission to complete the left out terms of reference point No.(d), (e) and suggestion for publication^{of} news touching Netaji's alleged death and place of death has become inevitable for greater public importance;

20. That the Central Government can not reject the Mukherjee Commission on 17.05.2006 when the Central Government felt that third commission is necessary and the commission was appointed on 14.05.1999 for the following reasons which were expressly stated in the Appointment vide Notification No.S.O.339 (E) dated 14.05.1994 issued by the Central Government of India, Ministry of Home Affairs :-

"And Whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely in disappearance of Netaji Subhas Chandra Bose in 1945".

21. That it is pertinent to mention here that the appointment of said Commission stemmed from the order/direction made by the Hon'ble High Court at Calcutta on a public interest litigation and a unanimous resolution passed by the West Bengal Legislative Assembly and for aforesaid reasons the Central Government has got no right to unilaterally reject the Commission's report on 17.05.2006.

✓ 22. That it is further stated that after statements of the then Prime Minister Monarji Desai made on 28.08.1978 on the floor of the Parliament (Lok Sabha), which were recorded at Page No.455 and 456 of the Parliamentary Proceeding (as per Mukherjee Commission Report), the earlier Committee's and Commission's Reports had become redundant and stood cancel and in spite of such position the Central Government can not embrace or clutch now the earlier Committee's and Commission's report.

23. That it is submitted that when the people of India once had spent huge money for the period from 14.05.1999 to 08.11.2005 for Commission to find out the real truth of alleged disappearance and/or death of their National Hero Netaji Subhas Chandra Bose, the said people for the second time shall not hesitate to spent further money to put a permanent end of the said controversy for which the judicial intervention of the Hon'ble Court is inevitable and earnestly solicited.

24. That it is further stated that Mukherjee Commission in its report mentioned about the visits of different foreign countries and stated the nature of information and/or documents collected therefrom but unfortunately all achieves (except six) were not visited by the Mukherjee Commission since within very short time visit for the period from September 20 to September 30, 2005 to Russian Federation and collection therefrom became impossible or impracticable and because the complete Inquiry could not be done in Russian Federation, and thus, Russian rest part of Inquiry in other achieves is further needed.

25. That it is further submitted that an interim order is required relating to publication of news of alleged death of Netaji in 1945 or met with an accident in plane crash in Taihoku and unless such interim order is granted the said wrong publication of Netaji's death shall be continued and till clinching evidence as to death and place of death of Netaji is forthcoming the said wrong publication is required to be discontinued forthwith.

26. That since Mukherjee Commission was constituted by issuing a direction under high prerogative Writ, dated 31.04.1998, and the name of the Chairman of the Commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India and since the said

Commission was constituted as a special case as of great public importance, the sovereign parliament ^{on the Central Government} can not unilaterally cancel or reject the Mukherjee Commission report dated 17.05.2006 whereas the earlier Committee and Commission were constituted at the instance of Central Government. Therefore, such rejection is absolutely illegal and not in accordance with law and liable to be set aside.

27. That it is further stated that as per provision under section 3(4) of the Commission of Inquiry Act, 1952 the Central Government has only authority either to act upon report of Commission or not but in no case reject the said report. The object of rejection of said Mukherjee Commission report is absolutely illegal and political motivation and against the said provision of law.

28. That the fundamental rights of the petitioner guaranteed under Article 14 and 19(1) of the Constitution of India have ^{been} violated due to arbitrary rejection of Mukherjee Commission's report on 17.05.2006.

29. That there is no speedy, efficacious, legal alternative remedy save and except reliefs under Writ jurisdiction.

30. That the records are located outside original civil jurisdiction of this Hon'ble Court and direction be given to produce and/or transmit all relevant records at the time of hearing and render justice to the petitioners.

31. That the petition is made on good faith to secure the ends of justice.

Under the above facts and circumstances it is prayed that your Lordship may be graciously pleased to issue -

a) a Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhas Chandra Bose in 1945 in terms of earlier reference point No.(d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents

or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the commission for completion of enquiry in order to bring an end of controversy;

b) a Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.05.2006 by the Central Government being Annexure "P-5" to the petition before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.05.2006 and render conscionable justice to the petitioners;

c) A Rule NISI in terms of the prayer aforesaid;

d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhas Chandra Basu in 1945 till disposal of this writ application;

e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

And your petitioners, as in duty bound shall ever pray.

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46AFFIDAVIT

I, **Subhash Chandra Basu**, Son of Late Surendra Nath Basu, aged about 43 years, by faith Hindu, by occupation Advocate, residing at 86, Sadar Boxi Lane, P.O. & P.S. Howrah, District - Howrah, Pin-711101, do hereby solemnly affirm and say as follows :-

1. That I am the writ petitioner of the instant case and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in paragraph Nos. 1, 2, 8, 10, 16 (P), 18, 27 to 31, are true to my knowledge, those made in paragraphs Nos. 3 to 7, 11 to 16 (P), 20 to 22, are true to my information derived from record, which I verily believe to be true and the rest of my respectful submission before the Hon'ble Court.

Prepared in my office

Sd/- S. C. Basu,

Advocate.
Believing me in person

Solemnly affirmed before me on

the 28th day of April, 2008.

Sd/- S. C. Basu

Deponent is known to me

Sd/- N. K. Ghosh

Clerk to : Mr.

Advocate

Sd/- *allise'fle*
Commissioner.

AFFIDAVIT

I, **Sri Pankaj Halder**, son of Sri Late Arabinda Halder, aged about 32 years, by faith Hindu, by occupation Advocate, residing at Village - Mathurapur, Post Office and Police Station - Mathurapur, District - South 24-Parganas, do hereby solemnly affirm and say as follows :-

1. That I am the writ petitioner of the instant case and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in paragraph Nos. 1, 2, 8, 10, 16 (p), 18, 27 to 31, are true to my knowledge, those made in paragraphs Nos. 3 to 7, 11 to 16 (p), 20 to 22, are true to my information derived from record, which I verily believe to be true and the rest of my respectful submission before the Hon'ble Court.

Prepared in my office

Sd/- Pankaj Halder
 Advocate.
 Petitioner in Person

Solemnly affirmed before me on
 this the 28th day of April, 2008.

Sd/- Pankaj Halder

Deponent is known to me

Sd/- N.K. Ghosh

Clerk to : Mr.

Advocate

Sd/-
 Commissioner.

forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

3. More than seven months have elapsed since the directions were issued. Through these petitions, Dr. Singhvi, the learned Amicus Curiae, who had assisted the Court in the main petition, seeks a direction, calling upon the Director General of Police and the Home Secretary of every State/Union Territory to report to this Court compliance of the above directions and the steps taken by the All India Radio and the National Network of Doordarshan for broadcasting the requirements.

4. We direct the Registry to send a copy of this application, together with a copy of this order to respondents 1 to 31 to have the report/reports from the Director General of Police and the Home Secretary of the concerned State/Union Territory, sent to this Court regarding the compliance of the above directions concerning arrestees. The report shall indicate in a tabular form as to which of the "requirements" has been carried out and in what manner, as also which are the "requirements" which still remain to be carried out and the steps being taken for carrying out those.

5. Report shall also be obtained from the Directors of All India Radio and Doordarshan regarding broadcasts made.

6. The notice on respondents 1 to 31, in addition, may also be served through the standing counsel of the respective States/Union Territories

in the Supreme Court. After the reports are received, copies of the same shall be furnished to the Advocate on Record for Dr. Singhvi, Ms. Suruchi Agrawal, Advocate.

7. The reports shall be submitted to this court in the terms, indicated above, within six weeks from today. The matters shall be put up on board for monitoring, after seven weeks.

Order accordingly.

AIR 1997 SUPREME COURT 3019

(From : Calcutta)*

Mrs. SUJATA V. MANOHAR AND
G. B. PATTANAİK, JJ.

Spl. Leave Petn. (C) No. 628 of 1994 with
Transferred Case (C) No. 7 of 1994, D/- 4-8-1997:

Union of India, Petitioner v. Bijan Ghosh and
others, Respondents.

(A) Constitution of India, Arts. 18, 136 — Award of decorations by President — Press communique announcing conferment of award of Bharat Ratna Posthumously on Netaji Bose — Unhappiness expressed by members of public and members of Netaji's family at such announcement — Govt. of India in deference to sentiments expressed not proceeding further to confer award and treating the matter as closed — Objection to word 'posthumously' used in press communique therefore not considered — Press communique declared as cancelled.

(Para 6)

(B) Constitution of India, Art. 18 — Notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres./55 Cls. 1, 8, 10 — Bharat Ratna, Padma Vibhushan, Padma Bhushan etc. — Award of — Annulment of — Procedure.

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of

*C. O. No. 6720 of 1993, D/- 6-12-1993 (Cal.)

HO/HO/S629/97/VVG/CSL

the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India.

(Para 6)

Altaf Ahmad, Addl. Solicitor General, B. Parthasarathi, Hemant Sharma, P. Parmeswaran, Advocates with him for Petitioner; In person for the Respondent. F. S. Nariman, M. N. Krishnamani, Sr. Advocates, Rudra Bhattacharjee, (Subhash Sharma), Advocates for Ms. Sarla Chandra, Advocate with them for Respondents. V. P. Saini, In-person for Respondent.

ORDER :— The proceedings which are before us have arisen out of a press communique which was issued from the Rashtrapati Bhawan, New Delhi and was published on 23rd of January, 1992. It is to the following effect :—

"The President is pleased to confer the award of Bharat Ratna posthumously on Shri Subhash Chandra Bose."

On reading this press communique the sentiments of many people were hurt. The petitioner filed a writ petition in the Calcutta High Court praying, inter alia to recall, rescind cancel and revoke the 'Bharat Ratna' purported to be conferred on Netaji Subhas Chandra Bose posthumously by the press communique dated 22nd January, 1992 and forbear from handing over to any person or persons, institution or institutions any document or insignia or symbol containing the impugned 'Bharat Ratna' or any communication bearing reference thereto for acceptance or preservation or display or for any other purpose. The petitioner also prayed for a direction that respondents 1 and 2 declare full particulars of the whereabouts of Netaji Subhas Chandra Bose from 18th of August, 1945 till date on the basis of records and information at their disposal dehors the reports and findings of the Netaji Inquiry Committee 1956 and the Netaji Inquiry Commission, 1970, and to institute a proper investigation into such whereabouts with a view to locating him, if alive, and bringing him to India with due honour and dignity and if he is found to have died, to furnish full particulars of his stay from 18th August, 1945 onwards and his subsequent death and the place and manner of disposal of his mortal remains. There are various reliefs prayed for which are connected with these reliefs.

2. The petitioner has taken strong exception to the use of the word 'posthumously' in the press communique and has submitted that the Government of India has not officially accepted the alleged report of the death of Netaji Subhas Chandra Bose in an air-crash in Taiwan on 18th of August, 1945. Without any specific report of the death of Netaji Subhas Chandra Bose being accepted by the Government of India, it cannot and should not confer on him any title with the description 'posthumously'. In this connection elaborate averments have been made about the Netaji Inquiry Committee, 1956 which was then constituted and the report of this Committee as also the Netaji Inquiry Commission, 1970 constituted under the Commissions of Inquiry Act, 1952. It is contended that a further inquiry should be held in this connection and in the absence of such an inquiry the award should not be conferred posthumously.

3. The petitioner has also raised another objection to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose. It is contended that an award or a title has its own limitations. When a personality is higher and greater than any award or title, conferring of such honour on that person becomes ridiculous and it becomes an act of "carelessness" to classify such a person as an equal of others who have already been awarded such title or who may be awarded such a title in future.

4. It seems that the family members of Netaji Subhas Chandra Bose also conveyed to the Government of India their unhappiness at the announcement and expressed their unwillingness to accept such an award.

5. In view of the sentiments expressed by the members of public and the family members of Netaji Subhas Chandra Bose in connection with the press communication, the Government of India did not proceed further in the matter. In their affidavit which is filed in these proceedings, they have stated that the matter was treated as closed. The original petitioners have expressed their anguish at this statement made on affidavit by the Government of India and have submitted that the award/press communication should be withdrawn.

6. We have heard the original petitioners and the learned advocates appearing on behalf of some

of the petitioners. In order to clarify the position, Mr. Altaf Ahmad, learned Additional Solicitor General has drawn our attention to notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres. 55 setting out the Statutes and Rules relating to the awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padmashri. It sets out, inter alia, as follows :—

"1. The decoration shall be conferred by the President of India by a Sanad under his hand and seal.

8. The names of the persons, upon whom the decoration is conferred, shall be published in the Gazette of India and a register of all such recipients shall be maintained under the direction of the President.

10. The President may cancel and annul the award of the decoration to any person and thereupon his name shall be erased from the Register and he shall be required to surrender the decoration and the Sanad. But it shall be competent for the President to restore the decoration and Sanad and to withdraw the orders of cancellation and annulment. The notice of cancellation or restoration in every case shall be published in the Gazette of India."

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India. It is pointed out by the Additional Solicitor General that the award has to be conferred by first publishing the name of the recipient in the Gazette of India and entering it in the register of recipients. In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the

award and hence the name was not published in the Gazette of India, nor was it entered in the register of recipients, nor was any decoration conferred by the President by a Sanad under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia, of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in these proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communique or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communique. Since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of.

Order accordingly.

AIR 1997 SUPREME COURT 3021

K. RAMASWAMY AND D. P. WADHWA, JJ.*
Writ Petn. (C) No. 824 of 1988 with
Writ Petn. (Cri.) Nos. 745-54 of 1990,
D/- 9-7-1997.

Gaurav Jain, Petitioner v. Union of India and
others, Respondents.

(A) Constitution of India, Art. 32 — Public

*The judgments are printed in the order in which they are given in the Certified Copy ... Ed.

GO/HO/S 573/97/VNP/RTT

contract, and the tenant cannot claim that his tenancy is governed by the contract and not by the Rent Act.

30. Lastly, we are also of the view that clause (v) of the disputed document (Exhibit No.) clearly comes within the ambit of Section 3(1)(k) of the West Bengal Premises Tenancy Act, 1956, the question of service of notice under section 13(6) of the West Bengal Premises Tenancy Act, 1956 of the plaintiff also does not arise at all.

31. We, therefore, concur with the findings of the learned trial Judge and the appeal, accordingly, stands dismissed without any order as to costs.

32. The prayer for stay of operation of the order as made by Mr. Sadhan Roychowdhury, learned Advocate for the appellant, however, is refused.

A. B. MUKHERJEE, J. :- 33. I agree.

Appeal dismissed.

AIR 1999 CALCUTTA 9

PRABHA SHANKER MISHRA, C.J. AND B. BHATTACHARYA, J.

Rudra Jyoti Bhattacharjee and another. Petitioners v. Union of India and others. Respondents.

W.P. No. 281 of 1998, D/- 30-4-1998.

Constitution of India, Arts. 226, 19(1) — Public interest litigation — Death of Netaji Subhashchandra Bose — No conclusive proof — Publications concerning his freedom struggle and death — Likelihood of being defamatory and causing public disturbance — Appropriate directions issued to Govt. of India.

In instant public interest litigation the petitioner has stated and in doing so he has only echoed and joined a multitude of Indians that for his gallant deeds for independence of India, Netaji Subhashchandra Bose is recognised as one of the greatest National leaders of international importance; his mysterious disappearance on and from August 1945 is still wreaking and agitating the minds of the citizens of India and the story which was once floated that he died in the alleged plane crash on 18th August, 1945 at Tai Hoku in Japan is not accepted by the Indians. It was not possible

for the Govt. of India to take any action at the present on the suggestion of Gen. Fujiwara of Japan to bring the ashes said to be of Netaji lying at Renkoji Temple to India. Some publications in respect of which mention is made by the petitioners according to them are per se defamatory to the National Hero Subhas Chandra Bose. One of the most cherished rights of the Indians is the freedom of speech and expression, yet it is important that this right is not exercised to disturb public order or cause incitement to offence or defamation.

(Paras 4, 5, 19)

It was felt that there is a need to give a fresh look to such publications and proscribe such books or such portion of the books which spelt one way or the other on the subject of the death of Netaji Subhas Chandra Bose's pre-independent activities in respect of which the Government of India is yet to complete enquiry. All fresh or new publications, shall also need a similar scrutiny and all such scrutiny shall be made keeping in view Art. 19(1)(a) read with Art. 19(2) of the Constitution of India.

(Para 19)

For the reasons aforementioned, directions as follows were issued :— (1) The Govt. of India shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Enquiry as a special case for the purpose of giving an end to the controversy (a) whether Netaji Shbhas Chandra Bose is dead or alive; (b) if he is dead whether he died in the plane crash, as alleged; (c) whether the ashes in the Japanese temple are ashes of Netaji; (d) whether he has died in any other manner at any other place and, if so, when and how; (e) if he is alive, in respect of his whereabouts. (2) The Govt. shall take the people of India in confidence. (3) The Govt. shall at appropriate level examine/scrutinise all publications pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence. (4) The Govt., if so advised, shall inform all publication Houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above.

(Para 20)

Cases Referred : Chronological Paras
W.P. No. 1805 of 1997, D/- 7-4-1998 (Cal) 7, 8
AIR 1997 SC 3019 : 1998 WBLR (SC) 9 : 1997
AIR SCW 3052 7, 11

Rudra Jyoti Bhattacharjee in person; M. B. Sarkar, Sr. Advocate, for Respondents.

PRABHA SHANKER MISHRA, C.J.:— It is difficult for us to pick up the threads to have any well-knit statement of fact from the contents of the instant petition yet, after our several attempts and after hearing the petitioner in person and the learned Advocate representing the respondents Nos. 1 to 4, we have been able to gather some bits from here and some bits from there to have some comprehension of the narration in the petition.

2. The Asiatic Society, Calcutta is impleaded as one of the respondents. We do not, however, find any reason why any prerogative order and/or direction be issued or made against the Society. Since, in our view, the Society is not a necessary party, we are not persuaded to issue any notice to it, name of the 5th respondent is accordingly delated and expunged.

3. Alleged mysterious disappearance of Netaji Subhas Chandra Bose, according to the petitioner requires direction inter alia, to the respondents herein (1) to classify and disclose all documents relating to Netaji Subhas Chandra Bose including the Indian National Army; (2) to make a categorical statement whether name of Netaji was and still is in the list of war criminals drawn up after the Second World War and issue a press communique to the said effect; (3) not to allow any agency or publisher or any person to publish the story of the death of Netaji Subhas Chandra Bose in the alleged plane crash on 18-8-1945; (4) to disclose the stand of the Government of India regarding Netaji Subhas Chandra Bose if he is found on Indian soil — "whether Government of India will welcome him or hand over him to the allied forces for trial as war criminal and make a press communique to that effect" and (5) to produce and or transmit all the records, files and documents as mentioned in Annexure 'F' to the petition about disappearance of Netaji Subhas Chandra Bose since August 18, 1945 and subsequent thereto.

4. Petitioner has stated and in doing so he has only echoed and joined a multitude of Indians

that for his gallant deeds for independence of India, Netaji is recognised as one of the greatest national leaders of international importance that his mysterious disappearance on and from August 1945 is still wreaking and agitating the minds of the citizens of India and that the story which was once floated that he died in the alleged plane crash on 18th August, 1945 at Tai Hoku in Japan is not accepted by the Indians.

5. One British Intelligence Officer allegedly informed one Amrik Singh Gill, who was awaiting execution of death sentence, on 19th August, 1945 that Netaji died in an airerash on 18th August, 1945. Gill published the said information in a magazine of Netaji Centre Publication at Kualalampur. The same was reprinted in Jayshree, a Bengali magazine, in its Azad Hind Golden Jubilee number in October, 1993. Delhi Radio on 21st August, 1945 made the announcement that Netaji died in an airerash on 18th August, 1945 (Ref., "A Springing Tiger" by Hue Toy, a Military Intelligence Officer of British Army). Quite a few publications and information to the above effect followed and when the controversy thickened and mystery deepened, the Government of India constituted Netaji Enquiry Committee in the year 1956 with Sri Shahnwaz Khan as the President and Sri Suresh Chandra Bose and Sri S. N. Moitra as Members. This was followed by appointment of of a Commission of Enquiry in the year 1970. Netaji Enquiry Committee as well as the Commission of Enquiry submitted their reports. On 28th August, 1978, however, the then Prime Minister of India made a statement at the floor of the Lok Sabha that, "Shah Nawaz Committee and Khosla Commission hold the report of Netaji Subhas Chandra Bose's death following a plane crash as true. Since then reasonable doubts have been cast on the correctness of the two reports and various important contradictions in the testimony of the witnesses have been noticed. Some further contemporary official records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive". According to the petitioner, the above statement of the then Prime Minister of India of a virtual and simultaneous burial of the Netaji Enquiry Committee and Enquiry Commission Reports. However, on 11th April, 1979 the then Minister of State for Home

Affairs made a statement on the Lok Sabha in reply to a question that was raised on the request by General Fujiwara of Japan for bringing the alleged ashes of Netaji from Renkoji Temple to India. "In the light of reasonable doubts cast on the correctness of the conclusions reached in two enquiry reports on the death of Netaji Subhas Chandra Bose, the Government finds it difficult to accept that the earlier conclusions are decisive. It will, therefore, not be possible to take any action at the present on the suggestion of Gen. Fujiwara to bring the ashes". According to the petitioner waxing and waning attitude and behaviour of the Government of India and other responsible persons have almost betrayed the design of precipitating and perpetuating the myth of the death of Netaji Subhas Chandra Bose in the alleged plane crash as reality without there being any serious effort to establish by hard and genuine evidence.

6. The petition with the facts as above, however, is littered with the statement that the then Government of India (British) after the Second World War declared Netaji a war criminal and following the independence and almost simultaneously to India's taking a seat/place in the United Nations Organisation ratified and agreed that war criminals of friendly countries would be delivered by the country holding them; thus agreeing that India would deliver all war criminals of the Second World War to the Government of Great Britain, and since Subhas Chandra Bose was declared a war criminal by the Great Britain and India ratified and agreed to do so, it still holds Subhas Chandra Bose as War Criminal. The petitioner, in short, in this behalf has been agitating and asking — Does Government of India still hold Subhas Chandra Bose as a War Criminal and thus does it behove the Government to treat Subhas shabbily as above, who while alive as well as in death is the embodiment of the ideals and images of a true Indian for all fellow Indians.

7. We have summarised above the material facts upon which the petitioner has sought for the reliefs as indicated above and omitted to mention particulars of information in any detail with respect to either statements or works about the death of Netaji as alleged and the mysterious disappearance, or on the Government of India even unwittingly as alleged, still holding that Netaji is a war criminal. Narration of the facts,

however, shall remain inconclusive if we do not refer to a recent case (W.P. No. 1805 of 1997) which has been disposed of by a Bench of this Court on 7th April, 1998. The said petition was filed as vox populi when newspapers like the Bartaman in its publication of 23rd August, 1997 and the Anandabazar in its publication of 27th August, 1997 published/reported that the then Defence Minister had stated that he would bring the ashes of Sri Subhas Chandra Bose from Renkoji Temple of Japan. After referring to the judgment of the Supreme Court in Union of India v. Bijon Ghosh, 1998 WBLR (SC) 9 : (AIR 1997 SC 3019) and the publications aforementioned, this Court in its judgment in the said case has stated as follows (at Page 3021 of AIR) :—

"When the Government of India intended to honour him by conferring the Bharat Ratna Award and used in Press communique the expression 'posthumously', a petition under Article 226 of the Constitution of India was moved and against an interlocutory order therein a Special Leave Petition was preferred before the Supreme Court We have no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose. Except in such proceedings in which any legal presumption is available, for purposes as the acceptance of ashes as that of Netaji Subhas Chandra Bose, it is not possible to accept that he died on 18-8-1945 or at any time thereafter unless there is conclusive evidence. Any ashes of a dead person in the absence of such evidence cannot be accepted as that of Netaji by the people of India. It would be difficult to accept that the Defence Minister of the country has made a statement of such consequences without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported and the petitioner has moved this Court as he is, as stated, alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at Renkoji Temple, Japan. Before closing the proceedings, however, in view of the assurance that nothing of the sort is likely to be done by the Government of India, we are inclined to order that before accepting the ashes which are allegedly kept at the

Renkoji Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence."

8. Thus, on the questions of death of Netaji, that he died in the plane crash, that his ashes are kept at Renkoji Temple of Japan, that Government of India is almost accepting that Netaji has died and that his ashes are being brought to India, in our view, are fully answered by the judgment in W.P. No. 1805 of 1997 dated 7th April, 1998. What needs, however, to be clarified for all concerned to bear in mind that Government of India did realise that full facts and evidence were required to be gathered from every person and place and it appointed first the Enquiry Committee and next Enquiry Commission. After the reports of the Committee and the Commission were submitted, the then Prime Minister made categorical statement in the Lok Sabha that since the reports, reasonable doubts have been cast on their correctness, various important contradictions are noticed in the testimony of the witnesses and further contemporary official documentary reports have become available, "in the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive

9. Official stand of the Government as expressed in the Lok Sabha on 28-8-1978 is reiterated on 11-4-1979 by the then Minister for State of Home Affairs. Two deviations/aberrations, however, occurred first when Government of India intended to honour Sri Subhas Chandra Bose by conferring 'Bharat Ratna' Award and used in the Press Communique the expression posthumously and secondly recount by Defence Minister of the country made a statement that Government of India intended to accept the factum of death of Subhas Chandra Bose and bringing the ashes which are stacked and kept at Renkoji Temple in Japan.

10. British quit India and the country got its independence but with Dominion Status in the British Empire on 15th August, 1947. The people of India, however, resolved to constitute it into a Republic and their Constituent Assembly on 26th day of November, 1949 adopted, enacted and

gave to the People the Constitution of India, to be effective on and from 26th of January, 1950. On 15th of August, 1947, India, indeed, achieved Independence and inherited the British sovereignty as well as British legacy. When the people, however, adopted the Constitution and established the Republic, India unshackled itself from the yoke of past to start afresh with the goal of justice, Social, Economic and Political, Liberty of thought, expression belief, faith and worship, Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation and guaranteed Equality of law and equality before law to all persons and freedoms of speech and expression, assembly peaceably and without arms, of association of Union and of movement freely throughout the territory of India and to reside and settle at any part of the territory of India. Article 13 of the Constitution declared laws inconsistent with or in derogation of the Fundamental Rights in Part III of the Constitution void and inhibited the State from making any law which took away or abridged the rights conferred by Part III.

11. The status Netaji Subhas enjoys in the Indian Republic is that of a person who is a Bharat Ratna. He enjoys a greater status in the hearts and minds of the people of India than a mere title which the Government bound by the rules of procedure intended to confer upon him. The expression 'posthumously' in the Communique of the Government of India when Bharat Ratna was to be conferred indeed was a sad and irresponsible act at some executive level of the Government which caused wide-spread resentment and as noticed by the Supreme Court in Union of India v. Bijon Ghosh, AIR 1997 SC 3019 (supra), "in deference to the feelings so eloquently expressed in this proceedings and which have no doubt conveyed to the Union of India, the award was in fact not conferred and the proposal was dropped". Another aberrative act caused the filing of W.P. No. 1805 of 1997 and this Court has ordered, "before closing the proceedings, however, in view of the assurance that nothing of the sort is likely to be done by the Government of India we are inclined to order that before accepting the ashes which are allegedly kept at the Renkoji Temple at Japan as that of Netaji Subhas Chandra Bose, the Government of

India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence."

12. The two aberrations are outside the Lok Sabha, true, one which carried the expression 'posthumously' was a Communique of the Government of India which is deference to the popular feeling was withdrawn but the other, that is to say the statement of the Defence Minister in respect of the ashes of Netaji was neither a statement in any of the Houses of Parliament nor in any Communique of the Government of India. That was out and out a statement most unwittingly made by the Defence Minister of the country. The Official stand of the Government of India, thus, is that notwithstanding the reports of the Enquiry Committee and the Commission of Enquiry aforementioned, there are doubts as to the death of Netaji in the manner as reports indicated and that there was/is a need to have further probe and enquiry to conclusively establish that Netaji has died, that he died in the plane crash, as alleged, and that his ashes are lying in some temple in Japan. With such specific stand when the Government has informed the Parliament more than once as above and no further enquiry or probe has yet been held, it is beyond imagination that Government of India without further or fresh enquiry and/or probe would accept the factum of death of Netaji Subhas and/or of the alleged air-crash death and/or the ashes being kept at a temple in Japan.

13. Learned Counsel for the respondents has categorically assured the Court that Government of India has maintained and is maintaining even now that a further/fresh enquiry/probe is required and the information that Netaji died in the plane-crash on August 18, 1945 is full of loopholes, contradictions and therefore inconclusive.

14. It is difficult to perceive why the petitioner has been harping on Netaji being a war criminal for the Indian Republic and its people as declared by the British Government in year 1945 or in year 1946. True people of India fought along with the British against Japan, German and Italy but they continued their war of Independence against them until they quit India on 15th of August 1947. For British, one who stood against

their oppressive acts was a criminal. For Indians, he was a freedom fighter. For British, who supported their war efforts friends and allies. For India all who stood against aggression and subjugation were friends.

15. Netaji Subhas Chandra Bose had launched his own war for Independence of India, formed Indian National Army (I.N.A.) marched ahead to free the people of India from subjugation and reached Indian territory of the Andamans and Kohima, Manipur. His was an army of Indians, for the Indians and for the Independence of India. Such a hero however when India achieved its independence was mysteriously missing. It (India) has been waiting to welcome its Hero. He has, however, not been found yet.

16. People in India are not going, it is clear from the aforementioned events, to accept that their hero who led the first national Army is dead unless they are convinced after seeing conclusive evidence in this regard. Who then will call Netaji a war criminal? Any Indian public except a traitor, a person who does not have the deference and love for the country and its heroes alone can do so. We do not have any hesitation in concluding that the statements in documents which are lying archives which are to the effect that Netaji is a war criminal and all persons who have been saying such a thing are relics of the British Raj. The petitioner shall be well advised to disabuse himself of even remotest/faintest idea that the people of India, and the Government of India since it is the Government of the People of India, can ever in dreams would think of Netaji as a war criminal or a traitor. As we understand sane and understanding people in Great Britain too take him as one of the ablest sons of India and one of the most loved by the People of India. We see thus no reason why any Rule be issued to declassify and disclose all documents relating to Netaji Subhas Chandra Bose including Indian National Army until such inquiry as is derived is held. Declassification and disclosure of the contents of sensitive documents cannot be insisted upon unless one is satisfied that such disclosure would not be against the interest of the sovereignty and integrity of India, the Security of the States, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court or defamation or would not cause incitement to an offence (see Article 19 of the

Constitution) and if made would not harm the public interest. In the instant case we have reasons to believe, any such disclosure would not help the cause of the public at all.

17. We see absolutely no reason for any statement from the respondents whether Netaji Subhas Chandra Bose is still in the list of war criminals drawn after the Second World War. As we have indicated above, no one much less people of India, would allow any person to treat Netaji as a war criminal. For, Indians Netaji is one of the great patriots.

18. It is difficult similarly to imagine how any Indian would think that Netaji would not be welcome on the Indian soil when Indians hold him amongst the best a few sons of India. The petitioner, as we have observed earlier, has been ill-advised to seek any disclosure from the Government of India or such information whether government of India would welcome him or hand him over to the Allied Forces for trial as war criminal. Such misconceived ideas, instead of helping the cause, as we have observed above, would cause dissensions and resentments and unnecessary bickerings. We are inclined however to take notice of one aspect of the matter : There has been no positive attempt it seems after the statement by the Prime Minister in the year 1978 and by the Minister of State for Home Affairs in 1979 that the findings in the reports of Netaji Enquiry Committee and Commission of Enquiry were not conclusive and decisive for any further or fresh enquiry and no serious effort in this behalf has been made. It seems lapses have occurred from time to time and public at large is dissatisfied. It is, therefore, necessary that respondents are told that their silence may not be appreciated in the matter and they for obvious reasons, as indicated above, should proceed in some effective manner to enquire into the circumstances of the death, whether Netaji has died and if he is alive where is he, with due despatch. Various publications some saying Netaji has died, some saying — No, he has not, some accepting the plane crash story, some not accepting it, some suggesting that the ashes in the temple in Japan are that of Netaji and others not accepting, some believing, and seriously, that Netaji is still alive and is available in some part of the world cause confusion and sometimes irritation and anger in public. No publication which

would affect the friendly relations with foreign States, public order, the sovereignty and integrity of India, cause defamation or incitement to an offence should be permitted. We have reasons to think that such irresponsible publications do sometimes affect public order and cause incitement to violence.

19. Some publications in respect of which mention is made by the petitioners which are per se defamatory to the National Hero Subhas Chandra Bose. One of the most cherished rights of the Indians is the freedom of speech and expression, yet it is important that this right is not exercised to disturb public order or cause incitement to offence or defamation. We have not, however seen such publications as a whole except such excerpts which are quoted by the petitioner for forming any conclusive opinion that books already published need to be prescribed. Yet we are satisfied that there is a need to give a fresh look to such publications and proscribe such books or such portion of the books which spent one way or the other on the subject of the death of Netaji Subhas Chandra Bose's pre-independent activities in respect of which the Government of India is yet to complete enquiry. All fresh or new publications, in our view, shall also need a similar scrutiny and all such scrutiny shall be made keeping in view Article 19(1)(a) read with Article 19(2) of the Constitution of India and the observations made above.

20. For the reasons aforementioned, we are inclined to direct as follows :-

(1) Respondents shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Enquiry as a special case for the purpose of giving an end to the controversy

(a) whether Netaji Subhas Chandra Bose is dead or alive;

(b) if he is dead whether he died in the plane crash, as alleged;

(c) whether the ashes in the Japanese temple are ashes of Netaji;

(d) whether he has died in any other manner at any other place and, if so, when and how;

(e) if he is alive, in respect of his whereabouts.

(2) The respondents shall follow for the said purpose the directions of this Court given in W.P. No. 1805 of 1997 namely, to take the people of

India in confidence:

(3) Respondents shall at appropriate level examine/scrutinise all publications pertaining to the matter as above and proscribe, if necessary, such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence;

(4) Respondents, if so advised, shall inform all Publication Houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above.

21. This disposes of the writ application..

B. BHATTACHARYA, J. :— 22. I agree.

Order accordingly.

AIR 1999 CALCUTTA 15

BHAGABATI PROSAD BANERJEE

AND RONOJIT KUMAR MITRA, JJ.

Moulana Mufti Syed Md. Noorur Rehman Barkati and others, Petitioners v. State of West Bengal and others, Respondents.

W.P. No. 8146(W) of 1997, D/- 4-3-1998.

(A) Constitution of India, Art. 25 — Restrictions on use of microphone and loud speakers at time of giving Azan — No violation of right under Art. 25 is involved.

Imposition of restrictions on use of microphones and loud speakers at time of Azan is not violative of right under Art. 25.

(Para 25)

Azan is certainly an essential and integral part of Islam but use of microphone and loud-speakers are not an essential and an integral part. Microphone is a gift of technological ages, its adverse effect is well felt all over the world. It is not only a source of pollution but it is also a source which causes several health hazards. Traditionally and according to the religious order, Azan has to be given by the Imam or the person incharge of the Mosques through their own voice, this is sanctioned under the religious order. Azan is not a form of propagation but it is an essential and integral part of religion to meet at the prayer from a call being made through

GP/JP/C39/98/SNV/USA

Azan.

(Paras 25, 26, 27)

(B) Constitution of India, Arts. 14 and 19(1)(a) — Restrictions on use of microphone at time of Azan by authorities in West Bengal — Other States not imposing such restrictions — No discrimination results.

(Para 27)

(C) Environmental (Protection) Act (29 of 1986), S. 3 sound pollution — Citizens have right to be protected against excessive sound under Art. 19(1)(a) of the Constitution.

Constitution of India, Art. 19(1)(a).

(Para 27)

Cases Referred :	Chronological	Paras
1997 (2) Cal LJ 468		14, 18
(1996) 4 All ER 903 R v. Secy of State for Transport ex. p.		14
(1995-96) 100 Cal WN 617		1, 7, 8, 11
AIR 1989 SC 1933		18
AIR 1989 SC 436		18
AIR 1987 SC 1086		18
AIR 1983 SC 75 : 1983 Tax LR 2407		18
AIR 1961 SC 1402		25
AIR 1954 SC 282		25

Kalyan Bandopadhyay and Kishore Dutt, for Petitioners; Roy Choudhury, for Respondents. M. C. Das and Mukherjee, for Pollution Control Board.

BHAGABATI PROSAD BANERJEE, J. :— This matter was assigned by the Hon'ble Chief Justice before this Bench. The writ application has been filed by Moulana Mufti Syed. Md. Noorur Rehman Barkati, Imam and Khatib. Tipu Sultan Shahi Masjid, Dharamtala and Chairman Gharib Nawaz Educational and Charitable Society, Calcutta and eight others for a declaration that Rule 3 of the Environmental (Protection) Rules, 1986 vis a vis Schedule III of the said Rule do not apply in case of Mosques more particularly at the time of call of Azan from the Mosques and for the further declaration that Schedule III of the Environmental (Protection) Rules, 1986 is ultra vires Articles 14 and 25 of the Constitution. The petitioners also prayed for withdrawal of all conditions and restrictions which were notified by the Police and other authorities pursuant to the order passed in the case of Om Birangana Religious Society v. State, reported in 100 CWN 617.

"P/3"

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 14.5.99

S.O.339(E) – Whereas the Shah Nawaz Khan Committee and the Khosla Commission of Inquiry appointed by the Government of India in April, 1956 and July, 1970 respectively to inquire into and to report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok about the 16th August, 1945, his reported death as a result of an aircraft accident, and subsequent developments connected therewith had come to the conclusion that Netaji Subhas Chandra Bose met his death in an air crash;

And, whereas there is a widespread feeling among the public that the issue of finding the truth about Netaji's death still remains;

And, whereas there has been a consistent demand for a further inquiry into the matter;

And, whereas the Calcutta High Court also directed the Government of India for a vigorous inquiry in accordance with Law, if necessary, by appointing a Commission of Inquiry for the purpose of giving an end to this controversy;

And, whereas a Motion was adopted on 24.12.1998 by the West Bengal Legislative Assembly wherein a demand has been made for a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose;

And, whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely, the disappearance of Netaji Subhas Chandra Bose in 1945;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Supreme Court of India.

2. The Commission shall inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

3. The Commission shall also examine the manner in which the exercise of Scrutiny of Publications touching upon the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.
4. The Commission shall submit its report to the Central Government as soon as possible but not later than six months from the date of publication of this notification.
5. The headquarters of the Commission shall be at New Delhi, and/or any other place as determined by the Commission.
6. The Central Government is of the opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the said Commission and the Central Government in exercise of the powers conferred by sub-section (1) of the said section 5, hereby directs that all the provisions of the said sub-sections (2) to (5) of that section shall apply to the Commission.

Sd/-

(NIKHIL KUMAR)
SPECIAL SECRETARY (ISP)

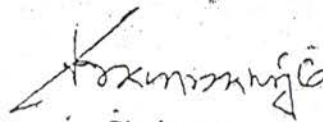
Chapter Five

Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged;
- (c) The ashes in the Japanese temple are not of Netaji;
- (d) In absence of any clinching evidence a positive answer cannot be given;
- and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon its above findings - that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.


Chairman

Kolkata,
November 07, 2005

Mukherjee Commission

From Wikipedia, the free encyclopedia

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The **Mukherjee Commission** refers to the one-man board of Mr. Justice Manoj Mukherjee , a retired judge of the Supreme Court of India which was instituted in 1999 to enquire into the controversy surrounding the reported death of Subhas Chandra Bose in 1945.

On April 30, 1998 that the High Court of Calcutta gave orders to the then BJP-led Government to "launch a vigorous inquiry as a special case for the purpose of giving an end to the controversy".^[1]

The purpose of the commission was the ascertain the following:

1. Whether Netaji Subhas Chandra Bose is dead or alive;
2. If he is dead whether he died in the plane crash, as alleged;
3. Whether the ashes in the Japanese temple are ashes of Netaji;
4. Whether he has died in any other manner at any other place and, if so, when and how;
5. If he is alive, in respect of his whereabouts.

The commission is also the first to probe into the much publicized Soviet-connection. The basics of which are that Netaji Subhas Chandra Bose did indeed survive the end of the Second World War, and detained in a Siberian camp in the late 1940's. A former Russian General swore under oath to the commission that he had seen a true Soviet-cabinet paper detailing and discussing a "living" Subhas Chandra Bose, one year after his supposed death.

Many, however, feel that with a new Congress controlled government now in power, the commission's results may be undermined. Many conspiracies abound, and many contain specific details that are damaging to the Congress Party and Indian Prime Minister Jawaharlal Nehru.

Three researchers who helped find the declassified documents in the military archives of Paddolsk, Russia, Purabi Ray, Hari Vasudevan and Shobanlal Dutta Gupta, have also reported threats from unidentified persons upon their lives, if they did not stop their research. Many files and documents by the Union Home Ministry have been deemed a risk to national security and under Sections 123 and 124 of the Evidence Act and Article 74(2) of the Constitution of India, have not been disclosed to the commission.

The Mukherjee Commission is also not the first commission created to ascertain the death of Netaji Subhas Chandra Bose. The two previous commissions were the Shah

Newaz Commission (appointed by Jawaharlal Nehru) and The Khosla Commission respectively. The Khosla Commission, created by the government of Indira Gandhi (daughter of Jawaharlal Nehru), reported that all documents relating to Prime Minister Nehru and the reports of Netaji Subhas Chandra Bose were either missing or destroyed.

[edit] Govt of India rejects Mukherjee Commission report

The Mukherjee Commission report was tabled in the Parliament of India on May 17, 2006. The report said that Netaji did not die in the alleged air crash of 1945 and the ashes at the Renkoji temple are not his ashes. The report also did not comment on Netaji's alleged stay in Russia after 1945 and called for further investigation into the matter. However, the report said that Netaji could be presumed to be dead today.

The Govt of India has rejected the findings of the Commission, saying that it did not agree with the findings.

[edit] Mukherjee Commission report submitted

The Death of Netaji remains a mystery. No one cooperated in the investigation and consequently the JMC of enquiry was forced to submit its unfinished work to the home minister Shivraj Patil. The main reason for this is the non-cooperation shown by the home ministry. The dissatisfaction caused resulted in Justice Mukherjee sending the report through his secretary rather than submit it in person.

During the whole tenure of the investigation, only one country, Taiwan has shown any real cooperation. Even the Govt of India refused to share some important intelligence files under the pretext of them being sensitive. The Govt will be tabling this report along with the ATR to the parliament. At the moment the home minister has passed on this 500 page report to the CS division of the ministry for scrutiny.

Subrata Bose, who was present in all the international trips made by the JMC has said that apart from Taiwan, no other country has shown any cooperation. On the basis of the information available from Taiwan it is now confirmed that no air-crash took place on 18th August 1945 which could have killed Netaji as previously propagated.

The commission had tried to uncover facts from trips to Japan, Taiwan and Britain. The UPA govt has permitted the commission to visit Russia. Bose said that Russia too did not cooperate in this investigation. Officials in Russia had said that files were present in the former KGB archives but the commission was not even allowed to visit the archives. The hostile posture of the British, Japanese and Indian governments is intriguing and seems to strongly point to an international conspiracy. In any case it is clear that Netaji Bose was seen in Russia in 1946. Lately American state department has sent information to the commission which corroborate the fact that no air crash

took place in Taiwan. The request for intelligence papers from the Govt. of India elicited the official response that they cannot be opened as they are of a highly sensitive nature that may jeopardise international relations between India and some of its friend nations.

The JMC commission was formed by the former NDA Government to investigate the mystery surrounding Netaji's death at the end of world war II. The only kindness shown by the UPA Govt was to extend the commission's tenure by 6 months - from May 2005 to 14th November 2005. But the commission has now submitted its report to the Govt before the end date.

[edit] External links

<http://www.rashtriyasahara.com/20051109/National.htm#2005110984>

INdians for Action - No. 1 site on the Netaji disappearance case

<http://www.indiansforaction.com>

Mission Netaji - Committed to find the truth behind the disappearance of Netaji

<http://www.missionnetaji.org>

Post Mukherjee Commission News Updates http://www.geocities.com/ang_18_1945/

May 17th, 2006. Mukherjee Commission report made public by the Indian Government along with the Government's criticism.

নেতাজি: প্রধানমন্ত্রীর দপ্তরকে ২৯টি গোপন ফাইলের তালিকা দিতে নির্দেশ তথ্য কমিশনের

নিজস্ব প্রতিনিধি, নয়াদিল্লি, ১৯ ফেব্রুয়ারি: নেতাজি সংক্রান্ত ২৯টি গোপন ফাইলের তালিকা ও নিবেদন (টাইটেল) আশাধী ১০ দিনের মধ্যে জনসমক্ষে প্রকাশ করার জন্য প্রধানমন্ত্রীর দপ্তরকে (পি এম ও) নির্দেশ দিলেন কেন্দ্রীয় মুখ্য তথ্য কমিশনার ওয়াজাহাত হাবিবুল্লাহ। মুম্বাইতে যোগাযোগের সময় তিনি তথ্যসমৃদ্ধ এই ২৯টি ফাইল এখনও 'টপ সিক্রেট', 'কনফিডেন্সিয়াল' এবং 'সিক্রেট' মার্কায় হয়ে প্রধানমন্ত্রীর দপ্তরে রাখা রয়েছে। সোমবার রাতে কেন্দ্রীয় মুখ্য তথ্য কমিশনার হাবিবুল্লাহ এক লিখিত আদেশে বলে দিয়েছেন, পি এম ও'র ডিরেক্টর অমিত আগরওয়ালকে এই ২৯টি ফাইলের তালিকা রাজধানীর 'মিশন নেতাজি' সংগঠনের কর্মী 'অনুজ ধরের হাতে' তুলে দিতে হবে। কারণ অনুজ ধরই 'মিশন নেতাজি' সংগঠনের তরফে গোপন ফাইলগুলির প্রকাশ চেয়ে তথ্য জানার অধিকার আইন মোতাবেক কমিশনে পিটিশন দায়ের করেছিলেন।



ফলে ৪টি ফাইল জনসমক্ষে প্রকাশ হলো একটি নিবেদন রাষ্ট্রের সঙ্গে ভারতের সম্পর্ক হানি হবে বলে মনমোহন সিংয়ের দপ্তর আগেই কেন্দ্রীয় তথ্য কমিশনকে জানিয়েছিল। কেন্দ্রীয় মুখ্য তথ্য কমিশনার ওয়াজাহাত হাবিবুল্লাহ পি এম ও'র সেই বয়স্ক মোনো নিয়েছেন এবং আরও কয়েকটি আবেদন নিয়েছেন, সংক্রান্ত ৪টি ফাইল সম্পর্কে আমরা প্রধানমন্ত্রীর দপ্তরের যুক্তি মেনে নিচ্ছি এবং ওই ফাইলগুলি প্রকাশ করার ব্যাপারে আমরা কিছু বলছি না। ফলে রহস্য থেকেই যাচ্ছে বলে ওয়াজাহাত হাবিবুল্লাহ মন্তব্য করেছেন। উল্লেখ করা যায়, গত ২৪ জানুয়ারি তথ্য কমিশনের শুনানি শেষ

প্রধানমন্ত্রীর দপ্তরকে নির্দেশ দিয়েছিল যে, ওই দপ্তরে রাখা নেতাজি সংক্রান্ত ২৯টি গোপন ফাইলগুলির তালিকা ও বিবরণ মুখ্য বন্ধ খামে ১৫ ফেব্রুয়ারি কমিশনের সামনে পেশ করতে হবে। সেইমতো গত শুক্রবার বিকালে নির্দিষ্ট সময়ে পি এম ও'র পদস্থ আমলা বেগের সামনে তা পেশ করেন। হাবিবুল্লাহ ও বেগের বাকি কমিশনাররা গত শনি ও রবিবার সেগুলি বিস্তারিত খতিয়ে দেখেন। কমিশন সূত্রে জানা গেল, পি এম ও'র ওই ঘরপাশ খামে মোট ৩৭ টি ফাইলের তালিকা ও বিবরণ দিয়েছে। যার মধ্যে ২টি ফাইল ইতিমধ্যেই 'উন্মুক্ত' মার্কায় জনসমক্ষে প্রকাশ করা হয়েছে এবং ৩৩টি ফাইল এখনও গোপন রয়েছে বলে পি এম ও কমিশনকে জানিয়েছে।

পি এম ও থেকে পেশ করা খামটির বিবরণও ভালো করে খতিয়ে দেখার পরে সোমবার রাতে জারি করা আদেশে মুখ্য তথ্য কমিশনার হাবিবুল্লাহ একথা জানিয়ে বলেছেন, 'প্রধানমন্ত্রীর

দপ্তরে রাখা নেতাজি সংক্রান্ত ৩৩টি গোপন ফাইলের মধ্যে ৭টিতে 'টপ সিক্রেট', ৩টিতে 'কনফিডেন্সিয়াল' লেখা রয়েছে। বাকি ২৩টি ফাইল হল 'সিক্রেট' মার্কায়। এই ৩৩টি গোপন ফাইলের মধ্যে আবার ৪টি হল বিদেশি রাষ্ট্র সংক্রান্ত। তাই সেগুলিকে নাম দিয়ে বাকি ২৯টি ফাইলের তালিকা ও টাইটেলের বিবরণ আজ থেকে ১০ দিনের মধ্যে প্রধানমন্ত্রীর দপ্তরের ডিরেক্টর অমিত আগরওয়ালকে তুলে দিতে হবে পিটিশনার অনুজ ধরের হাতে। এছাড়া ইতিমধ্যেই প্রকাশিত ২টি ফাইলের তালিকা এবং টাইটেলও পি এম ও'কে দিতে হবে।

২৭ মার্চ ২০০৮ বর্তমান [৭]

নেতাজির স্ত্রী-কন্যার চিঠি সহ ২৯টি গোপন ফাইলের তালিকা প্রকাশ কেন্দ্রের

নয়াদিল্লি, ২৬ মার্চ (পি টি আই): তথ্য জানার অধিকার আইনের জাঁতাকলে পড়ে শেষ পর্যন্ত নেতাজির অন্তর্ধান সংক্রান্ত ২৯টি গোপন নথির তালিকা প্রকাশ করতে বাধ্য হল কেন্দ্রীয় সরকার। প্রধানমন্ত্রীর দপ্তরে কড়া নিরাপত্তায় ঘেরা একটি ভবনে রাখা এই নথিগুলির মধ্যে নেতাজি সুভাষচন্দ্র বসুর স্ত্রী এমিলি শেফেল এবং মেয়ে অনিতা বসু পাকিস্তান সরকারকে লেখা চিঠিও রয়েছে বলে জানা গিয়েছে।

দিল্লির সংস্থা 'মিশন নেতাজি' আগেই প্রধানমন্ত্রীর দপ্তরের কাছে এই অপ্রকাশিত নথি সর্পির্ক জ্ঞাত করেছিল। কিন্তু গোপন নথিগুলির

তালিকা কেন্দ্রীয় সরকার প্রকাশ করেনি। জানানো হয়েছিল, এর সঙ্গে দেশের সার্বভৌমত্ব এবং অন্য দেশের সঙ্গে ভারতের সম্পর্কের বিষয় জড়িয়ে রয়েছে। এরপরই বিষয়টি কেন্দ্রীয় তথ্য

কমিশনের (সি আই সি) কাছে তুলে ধরা হয়। গত ৮ ফেব্রুয়ারি কমিশন প্রধানমন্ত্রীর দপ্তরকে অপ্রকাশিত ৩৩টি নথির মধ্যে ২৯টি নথির তালিকা



নেতাজি যে ইন্ডিয়ান-ন্যাশনাল আর্মি (আই এন এ) গঠন করেছিলেন, তার কোষাগার সংক্রান্ত নথি এবং তাঁকে 'মরণোত্তর' ভারত রত্ন দেওয়ার

শিরোনাম সহ প্রকাশের নির্দেশ দেয়। নেতাজির স্ত্রী-কন্যার চিঠি ছাড়াও প্রধানমন্ত্রীর দপ্তরে এই সংক্রান্ত অন্য যেসব নথি-প্রমাণ রাখা আছে, সেগুলির মধ্যে রয়েছে নেতাজির তথাকথিত চিতাভস্ম সংক্রান্ত কাগজপত্রও। এমনকী

বিষয়ের 'পুলিসি পেপার'-এর উল্লেখও প্রকাশিত তালিকার মধ্যে রয়েছে। তবে বাকি চারটি নথির তালিকা মুখ্য তথ্য কমিশনার ওয়াজাত হাবিবুল্লাহ নিজেই প্রকাশ করতে নিষেধ করেছেন। তিনি জানিয়েছেন, এই চারটি নথির সঙ্গেই অন্য রাষ্ট্রের সংযোগ রয়েছে। কাজেই এগুলির কথা প্রকাশ করা যাবে না।

কমিশনের জারি করা নির্দেশনামায় নেতাজি সংক্রান্ত ওই ২৯টি গোপন নথির মধ্যে সাতটিকে 'টপ সিক্রেট', তিনটিকে 'কনফিডেনশিয়াল' এবং বাকিগুলিকে 'সিক্রেট' বলে অভিহিত করা হয়েছে।

আনন্দবাজার পত্রিকা কলকাতা বৃহস্পতিবার ২৭ মার্চ ২০০৮

আনন্দবাজার পত্রিকা

নেতাজিকে নিয়ে গোপন নথি প্রকাশ

নয়াদিল্লি, ২৬ মার্চ: 'তথ্য জানার অধিকার' আইনের দৌলতে নেতাজি সম্পর্কিত অত্যন্ত গুরুত্বপূর্ণ কিছু নথি প্রকাশ করতে বাধ্য হল সরকার। এত দিন এগুলি প্রধানমন্ত্রীর দফতরে চূড়ান্ত নিরাপত্তায় ঘেরাটোপে রাখা ছিল। এর মধ্যে তৎকালীন সরকারকে লেখা নেতাজির স্ত্রী ও কন্যার কয়েকটি চিঠিও আছে। আছে তাঁর অন্তর্ধান, 'চিতা ভস্ম' ও 'মরণোত্তর' ভারত রত্ন সম্মান নিয়ে তথ্যসম্বলিত কিছু নথিও। তবে, বৈদেশিক সম্পর্কে বিরূপ প্রভাব পড়তে পারে, এই যুক্তিতে প্রধানমন্ত্রীর দফতর আগে এগুলি প্রকাশ করতে অস্বীকার করেছিল।— পি টি আই

From : 1. SRI SUBHAS CHANDRA BASU
Residing at- 86, Sadar Boxi Lane,
P.O. Howrah, P.S. Howrah,
Dist. Howrah, Pin - 711101.

2. SRI PANKOJ HALDER
Residing at- Village - Mathurapur,
P.O. Mathurapur, P.S. Mathurapur,
Dist. South 24-Parganas.

Date : 11.03.2008

To

1. The Hon'ble Minister for Home Affairs,
Government of India,
New Delhi - 110001.
2. The Hon'ble Minister of Foreign Affairs,
Government of India,
New Delhi.

Sir(s),

Sub : REAPPOINTMENT OF MUKHERJEE COMMISSION FOR
COMPLETION OF INQUIRY INTO DISAPPEANCE
AND/OR ALLEGED DEATH OF NETAJI SUBHAS
CHANDRA BOSE IN AUGUST, 1945.

With due reverence and submission, we would like to place before you the following facts for immediate consideration and necessary action :-

1. That with regard to mysterious disappearance of Netaji Subhas Chandra Bose first a three - member Inquiry committee, vide its Notification No.F-30(26) FEA/55 dated April 5, 1956, was appointed by the Government of India. The majority report which held that Netaji died in the aforesaid plane crash, was accepted by the Government of India.
2. That the said majority view of that committee, however, did not satisfy the public in general. There was further demand by the members of the Parliament to raise a voice for further enquiry into the matter. Then the Govt. of India vide Notification No. 25/14/70-Poll. 11.07.1970 constituted an Enquiry Commission headed by Shri G.D. Gholra, Retired Chief Justice of Punjab, High Court. The said Commission came to the conclusion that Netaji had succumbed to his injury sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo Japan. The findings of the Khosla Commission did not end the controversy surrounding Netaji's Death.
3. That thereafter a Writ Petition being W.P. No.281 of 1998 was filed in the Hon'ble High Court, Calcutta to launch a vigorous inquiry into the alleged disappearance/death of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of

Subhas Chandra Basu
Pankaj Halder

Inquiry and by an order dated April 30, 1998 the Hon'ble Division Bench, High Court, Calcutta, directed the Union of India for conducting an in-depth enquiry by appointing a Commission of Inquiry for the purpose of giving an end to the controversy.

4. That thereafter by a unanimous resolution adopted by the West Bengal Legislative Assembly on 24.12.1998 demanded that Government of India should make necessary arrangement for availability of records and documents in an outside India so that the scholars and people could have access to them and also constitute a fresh Inquiry Commission to remove the controversy and/or whereabouts of Netaji Subhas Chandra Bose.
5. That in the context, the Government of India appointed the one-man, Commissioner known as Mukherjee Commission by its Notification No.SO 339 (E) dated 14.05.1999. The said Commission shall inquire into the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith includings :-

- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is died, whether he died in the Plane Crash, as alleged;
- (c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- (d) Whether he has died in any other manner at any other place and, if so, when and how;
- (e) If he is alive, in respect of his whereabouts;

The Commission shall also examine the manner in which the exercise if security of publication touching upon the question or death of otherwise of Netaji can be undertaken by the Central Government in the circumstances.

6. That the Mukherjee Commission had examined 131 Nos. of Witnesses and perused 308 Nos. of Exhibits, and visited various probable places of death such as (i) Death in Red Fort, (ii) Death in Plane Crash, (iii) Death in Dehradun, (iv) Death in Sheopukalan and (v) Death in Faizabad, and also visited different foreign countries and ultimately came to the following conclusion/findings on 07.11.2005 :-

- (a) ~~Netaji~~ Subhas Chandra Bose is dead.
- (b) He did not die in Plane Crash as alleged.
- (c) The ashes in the Japanes Temple are not Netaji.
- (d) In absence of any clinching evidence a positive answer can not be given and,
- (e) Answer already given in (a) above;

*Subhash Chandra Bose
Pan Kajal*

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(70)

In the matter of publication touching upon the death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the Plane Crash, as alleged. The said report was submitted before the Government of India on 08.11.2005.

7. That the Mukherjee Commission report was tabled in Parliament on 17.05.2006 and Government of India rejected the findings of the Commission without assigning any reason for rejection. The commission lasts for about 6 years and 7 months from 14.05.1999 to 08.11.2005. A huge money from the public exchequer was spent for this purpose but Mukherjee Commissioner failed to make any finding when, where and how Netaji Subhas Chandra Bose died. Furthermore, the Commission made a presumption as to death of Netaji due to expiry of more than 108 years 9 months 9 days on 07.11.2005 (date of submission of report) since the date of birth of Netaji Subhas Chandra Bose was on 23.01.1897.
8. That the Mukherjee Commission suggested that as to publication touching the death of Netaji Subhas Chandra Bose, the Government of India can proceed on the basis that he is dead but not in the Plane crash, as alleged. The said controversy never ended rather after rejection of findings of Mukherjee Commission on 17.05.2006, the controversy has further ignited and encouraged. Though the object of the Commission was to make an end and to light on the points how, where and when Netaji Subhas Chandra Bose died.
9. That the Mukherjee Commission did not make any comment on Netaji alleged stay in Russia in 1945 and called for further investigation into the matter. As citizens of India we have every right to know about the date and place and reason of death of our national leader of the country.

Under the above facts and circumstances, you are requested to reappoint Mukherjee Commission to complete the Inquiry as per terms of reference into the disappearance and/or alleged death of Netaji Subhas Chandra Bose in August, 1945 and/or alleged stay in Soviet Russia.

Yours faithfully,

Subhash Chandra Basu
(Subhash Chandra Basu)

Pankaj Halder

(Pankaj Halder)

91
DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT
JURISDICTION
APPELLATE SIDE

W.P. NO. 8215 (W) OF 2008

IN THE MATTER OF :

An application under Article 226 of
the Constitution of India;

And

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

UNION OF INDIA & ORS.

.... RESPONDENTS

P E T I T I O N

ON-RECORD

SUBHASH CHANDRA BASU

Petitioner-in-Persons
Bar Association Room No.12
High Court, Calcutta

Sr No. 2 (I)

92

Most Immediate
Court Case

No.12014/6/2008-Cdn.
Government of India
Ministry of Home Affairs
Security Division

New Delhi, dated 24th June, 2008.

OFFICE MEMORANDUM

**Subject: Writ Petition No.8215 (W)/2008 filed in the Calcutta High Court by the
Subhash Chandra Basu & others.**

The undersigned is directed to enclose a copy of Para 7 of the Writ
Petition No.8215 (W)/2008 filed in the Calcutta High Court by Shri Subhash
Chandra Basu & others with the request that reply/comments of Public Section may
kindly be made available immediately and latest by 25.6.2008 positively.

[Handwritten signature]

(S.K. Malhotara)
Deputy Secretary to the Govt. of India

Shri S.K. Bhatnagar,
Deputy Secretary (Public Section),
Ministry of Home Affairs,
North Block,
New Delhi

issued
vide P.B. 5708
[Handwritten initials]
24/6/08

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No. 1/27/91-Public
Government of India
Ministry of Home Affairs
**

North Block, New Delhi,
June 25, 2008

OFFICE MEMORANDUM

Sub: Writ Petition No. 8215 (W)/2008 filed in the Calcutta High Court by Shri Subhash Chandra Basu and others.

The undersigned is directed to refer to Security Division's OM NO. 12014/6/2008-Cdn dated the 24th June 2008 on the subject mentioned above and to enclose a status note on the captioned subject. Apart from the status note, this Division has no further comments/input in the matter.

4751/DS(2)/08
26/6/08

Shri S.K. Malhotra, *Deputy Secretary*
Security Division
Jaisalmer House
New Delhi.

[Signature]
(S.K. Bhatnagar)
Deputy Secretary (A&P)

inspect
pl. include appropriately in the draft para
WS(L)
26/6/08

Status note on conferment of Bharat Ratna to Netaji Subhash Chandra Bose

Recommendations for the award of Bharat Ratna are made by the Prime Minister to the President.

On recommendation of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. A press communiqué announcing the conferment of award on Netaji was issued by the President's Secretariat on January 22, 1992.

In the case of posthumous awards, the award has to be received by the next of kin (NoK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was contacted in this connection, expressed certain reservations on receiving the award as according to her such an honour should have been appropriate in the fifties and felt that one cannot honour Netaji today by awarding the Bharat Ratna to him. She declined to receive the award.

Apart from the declining of accepting the award by Netaji's daughter, some persons submitted a memorandum to the then President. There was also a lot of criticism in Parliament and the media about the award. The crux and essence of all this was that the award was too late in the day for Netaji and also on the ground that it was not appropriate for the Govt. to announce the award 'posthumously' in the absence of credible evidence of Netaji's death.

The matter was submitted to the Prime Minister and the President. It was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award is actually conferred by the President during the presentation ceremony. Since the award was declined by the NoK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.



Pulok Chatterji
Secretary to PM



MOST IMMEDIATE

PRIME MINISTER'S OFFICE
New Delhi - 110101

D.O. No. 915/11/C/2/2008-Pol

June 23, 2008

Reference is invited to the enclosed copy of the Department of Legal Affairs, Branch Secretariat, Kolkata letter No. 592/Home/08 III/1626/3272 dated 10.6.08 addressed to the Home Ministry (copy endorsed to PMO), forwarding a copy of Writ Petition No. 8215 (W) of 2008 filed in the Calcutta High Court. The petition lists the Principal Secretary to PM as Respondent No. 2.

2. You may kindly ensure appropriate legal responses. The PMO may also kindly be kept apprised of the developments.

Regards

Yours sincerely,

(Signature)

(Pulok Chatterji)

Shri Madhukar Gupta,
Home Secretary,
North Block,
New Delhi.

Wt/LT 1/17 35/6/2008 So (Cdn)

PMO
p. 75/cv
& p. 179/cv
p. 204/cv

PMO
PMG - p 209/cv.
p. 234 213/cv
223/cv
229/cv

P-5180/148/08
26/6

7225/2501/08
27/6

Dear Shri Gupta
Re. ...
... put up
... by, ...
... have earlier
... dealt with
... a similar
... matter
... 26/6
... 27/6/08

JS/IS
27/6/08
DS(L)

14819/2502/08
11/7/08

पत्राचार विभाग

SPEED POST

MOI-F-No

592/ Home/877 11626/3232

(IN ALL CORRESPONDENCE THIS FILE NO. AND CAUSE TITLE MAY CLEARLY BE GIVEN)

दूरभाष 22484806

Telephone

फैक्स 22485215

Fax

विधि एवं न्याय मंत्रालय

MINISTRY OF LAW AND JUSTICE

विधि कार्य विभाग

DEPTT. OF LEGAL AFFAIRS

शाखा सचिवालय, कोलकाता

BR. SECTT. Kolkata

11, स्टैंड रोड, कोलकाता-700001

11, Strand Road Kolkata-700001

20.6.10-6-08

प्रति

To,

Mr S.K. Malhotra
Jy Singh
Ministry of Home Affairs
IS Division Cdn Section
JIA floor Lake Noyalk Bhavan
Khan Market
New Delhi-3

विषय

(Sub)-

WPNO 8215 W 108
Sri Subhash Chandra Basu Bar
20.6.10

महोदय महोदया

Sir/Madam,

सूचित किया जाता है कि श्री श्रीमती सि. के. घोष के (बार एसोसिएशन, कमरा सं.) 2 उक्त न्यायालय, कोलकाता, दूरभाष 9433506066 (उपरोक्त मामले में अभिलेख अधिकता के रूप में नियुक्त किया जाता है।

श्री श्रीमती जति एन. बास (बार एसोसिएशन, कमरा सं.) 5 उक्त न्यायालय, कोलकाता, दूरभाष उपरोक्त मामले में उल्लेखित होंगे।

(Please note that Sri/Smt T.K. Ghosh Bar Assn. with Sri/Smt. (Bar Assn. Room No. 2 Room No. High Court, Calcutta, Telephone No. 9433506066 has been engaged in the aforesaid matter as Advocate on Record High Court,

With Sri/Smt E.N. Basu (Bar Assn. Room No. 5 Calcutta, Telephone No. 9433506066 as his/her senior.

मुक्तद्वय में संलग्न मध्याह्न कागजातों, पैरावार टिप्पणी, संक्षिप्त विवरण तथा आवश्यक अनुदेश सह मामले से अभिज्ञ किसी ऐसे अभिलेख के प्रतिनिधित्व किया जाए जो शाखा-पत्र (1)। प्रत्युत्तर/अवेदन अपील आदि तैयार करने में कउसेल की सहायता को, इस मंत्रालय में तथा मामलों में नियुक्त कार्यकर्ताओं को सहित तथा मामले के अग्रगति के संबंध में कार्यालय को अवगत कराते रहे।

Contd/2.....

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You are requested to depute conversant officer with all relevant documents of the case and furnish Parawise comments, brief history and necessary instruction etc. for drawing Affidavit-in-Opposition/Reply/Application/Appeal Etc. to contact this Ministry and counsel engaged to do the needful and keep this office posted with the current development of the case from time to time.

वकालतनामा शासक पक्ष आदि दायर करने हेतु आनुसंगिक रखने अभिलेख-अधिवक्ता को भुगतान किया जाए.

Incidental costs may be paid to the Advocate-on-Record for filing Vakalatnama and Affidavit in Opposition etc.

पक्ष से प्राप्त के तुरंत बाद भारत सरकार के संबंधित विभाग द्वारा हस्ताक्षरित वकालतनामा अकिर्ले प्रस्तुत किया जाए.

Duly signed Vakalatnama by the concerned department of UOI may be furnished immediately after receipt of this letter.

महोदय महोदय

Encl:- As above. *WPN 8215 (10/08)*

आपका विश्वासी

SD 10/10/08
(जी० एस० मक्कड़)

का के० सरकारी अधिवक्ता

*Copy to - Principal Secy.
govt of India
- office of prime
- minister at 7 Race Course
New Delhi - 110003*

592
DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. NO. 8215 (W) OF 2008

Subject matter relating to :

"PUBLIC INTEREST LITIGATION"

Under Group - IX, Head ____, of the
Classification List.

CAUSE TITLE

SRI SUBHASH CHANDRA BASU & ANR.
..... PETITIONER

-VERSUS-

UNION OF INDIA & ORS.

..... RESPONDENTS

ON-RECORD

SUBHASH CHANDRA BASU
Petitioner-in-Person
Bar Association Room No.12
High Court, Calcutta.

DISTRICT : HOWRAH

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P. No. 8215 (W) of 2008

IN THE MATTER OF :

**SRI SUBHASH CHANDRA BASU &
ANR.**

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

INDEX

Sl. No.	Particulars of Documents	Annexure	Pages
1.	List of Dates		
2.	Points of Law involved		
3.	Writ Petition with Affidavit		
4.	Xerox Copy of the Order dated 04.08.1997 reported in AIR 1997 SC 3019.	"P-1"	
5.	Xerox Copy of the Order dated 30.04.1998 reported in 1999 Calcutta 9.	"P-2"	
6.	Xerox copy of the Notification No.S.O. 339(E) dated 14.05.1999 for appointment of Mukherjee Commission.	"P-3"	
7.	Xerox copy of the finding and/or conclusion of Mukherjee Commission's Report dated 07.11.2005.	"P-4"	
8.	Xerox copy of the Order of rejection of the conclusion/finding of Mukherjee Commission's report dated 17.05.2006.	"P-5"	
9.	Xerox copy of the news papers reports cutting dated 20.02.2008 and 27.03.2008. collectively.	"P-6" Collect.	
10.	Xerox copy of the Order dated 15.02.2005 passed in W.P. No.27541 (W) of 2006 by the Hon'ble Division Bench, High Court, Calcutta.	"P-7"	
11.	Xerox copy of the representation dated 11.03.2008 sent by the petitioners.	"P-8"	

DISTRICT : HOWRAH

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P. No. 8215 (W) of 2008

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

LIST OF DATES

<u>Sl. No.</u>	<u>Date</u>	<u>Events</u>
01.	23.01.1897	: Netaji Subhas Chandra Bose was born.
02.	18.08.1945	: Netaji allegedly died in plane crash in Taihoku.
03.	05.04.1956	: Shah Nawaz Khan Committee was appointed Vide Notification <u>No.F-30(26)FEA/55</u> to inquire into alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945.
04.	11.07.1970	: Khosla Inquiry Commission was constituted Vide Notification No.25/14/70-Poll- to enquire into the alleged disappearance and/or death of Netaji in 1945.
05.	03.09.1974	: Khosla Inquiry Commission's report was laid on the table of parliament (Lok Sabha).
06.	28.08.1978	: The then Prime Minister Morarji Desai made the statement on the floor of parliament that the earlier conclusion reports of Shah Nawaz Committee and Khosla Commission of Inquiry are not decisive.

(ii)

07.	1993	:	Writ Petition being C.O. No.6720 of 1993 was filed in the High Court, Calcutta challenging the press communiqué for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose posthumously.
08.	1994	:	The said Writ Petition was transferred as Transfer Case (C) No.7 of 1994 to the Hon'ble Supreme Court of India.
09.	04.08.1997	:	The Writ Petition was disposed of with a direction to cancel the said Press-Communiqué for conferment of Bharat Ratna Award of Netaji Subhas Chandra Bose posthumously.
10.	1998	:	A Writ Petition being W.P. No.281 of 1998 was further filed before this Hon'ble Court seeking for a direction for constituting a Commission of Inquiry to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
11.	30.04.1998	:	The said Writ Petition was disposed of with a direction upon the Union of India to constitute Commission of Inquiry to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
12.	28.12.1998	:	An unanimous resolution adopted in West Bengal Legislative Assembly demanding for Constituting a Commission of Inquiry into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.

(iii)

13.	14.05.1999	:	Mukherjee Commission was appointed Vide Notification No.S.O. 339 (E3) by virtue of order of the Hon'ble Divisional Bench, High Court, Calcutta as a special case to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
14.	07.11.2005	:	Mukherjee Commission's Report was concluded.
15.	08.11.2005	:	Mukherjee Commission's Report was submitted before the Central Government.
16.	17.05.2006	:	Mukherjee Commission's Report and the Action Taken Report (A.T.R.) were table before the Parliament by the Central Government and rejected the said Report.
17.	2006	:	A Writ Petition being W.P. No.27541 (W) of 2006 was filed by the petitioner No.1 for stopping all sorts of expenditure for upkeep and maintenance of alleged ashes of Netaji kept in Renkoji Temple in Japan.
18.	20.02.2008 27.03.2008	:	News published in Bartaman and Andabazar Patrika relating to 29 Nos. of Secret and Top Secret files of Netaji's death and I.N.S. Treasurer exposed to public by the order of Central Information Commission.
19.	11.03.2008	:	The representations were sent to different concerned authorities seeking for reappointment of Mukherjee Commission.

DISTRICT : HOWRAH

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P. No. (W) of 2008

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

POINTS OF LAW

1. Whether the Central Government has got any right to unilaterally cancel or reject the Mukherjee Commission report dated 18.05.2006 when the Commission was constituted by the direction of the Writ Court under high Prerogative Writ of the Hon'ble Division Bench, High Court, Calcutta and when the name of Chairman of Commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India ?.
2. Whether for greater Public Interest the reappointment or reopening of Mukherjee Commission is required for completion of inquiry in view of earlier terms of reference of appointment under clause No.2(d), (e) and for publication of News touching Netaji's alleged death or disappearance in 1945 ?.
3. Whether it is necessary to complete or cover the most vital left out points of the earlier terms of reference of appointment No.2(d), (e) and for publication of News of Netaji's alleged death ?

4. Whether the Commission is entitled to get all sorts of classified documents and files relating to Netaji's alleged death or disappearance in 1945 for the purpose of proper inquiry in the matter of Great Public Importance ?
5. Whether in any view Mukherjee Commission is required to be reappointment or reopening in order to remove controversy and/or to bring an end regarding Netaji alleged death or disappearance in 1945 as alleged ?
6. Whether after appointment Mukherjee Commission in 1999 the earlier. Committees report in 1956 and the Khosla Commissioner's report 1974 have automatically become invalid and/or redundant?
7. Whether even after the then Prime Minister's statement in the Lok Sabha in 1978 the value or wait-age of earlier committee's report and commission's report had completely lost or became null and void in the eye of law ?
8. Whether the non-supply of document/file/record relating to alleged death or disappearance of Netaji in 1945 before the Commission had caused or resulted the Commission not to give answer in respect clause No.(d) of the terms of reference of appointment of Mukherjee Commission in 1999 ?
9. Whether the Central Government earlier stand of the Committee's and Commission's report are contradictory to the opinion Commission for the third time for the same matter in the year; 1999 ?

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

W.P. NO. (W) OF 2008.

IN THE MATTER OF :

An application under Article 226 of
the Constitution of India;

-And-

IN THE MATTER OF :

A writ or writs in the nature of
Mandamus;

-And-

IN THE MATTER OF :

A writ or writs in the nature of
Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of
Mukherjee Commission for

completion of Inquiry into the matter of alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945 and/or continue further enquiry to find out the date of death of Netaji Subhas Chandra Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2.(d) - Whether he has died in any other manner at any other place and, if so, when and how," of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

IN THE MATTER OF :

The Evidence Act, 1872;

-And-

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights
enshrined under Article 14, 19(1) of
the Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

IN THE MATTER OF :

Non-Consideration of the
representation dated 11.03.2008
sent by the petitioner to the
concerned authorities;

-And-

IN THE MATTER OF :

1. **SRI SUBHASH CHANDRA BASU,**
Son of Late Surendra Nath Basu,

residing at 86, Sadar Boxi Lane,
Post Office, Police Station and
District - Howrah, Pin - 711101;

2. **SRI PANKAJ HALDER,**

son of Sri Late Arabinda Halder,
residing at Village - Mathurapur,
Post Office and Police Station -
Mathurapur, District - South 24-
Parganas.

... PETITIONERS.

-Versus-

✓ 1. **UNION OF INDIA,**

service through the Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi - 110001;

✓ 2. **PRINCIPAL SECRETARY,**

Government of India, Office of Prime
Minister at 7, Race Course Road,
New Delhi - 110003;

3. **SECRETARY,**

Ministry of Foreign Affairs,
Government of India, South Block,
New Delhi - 110001.

4. **SECRETARY,**

Ministry of Parliament Affairs,
Government of India, New Delhi-
110001.

..... **RESPONDENTS**

To

The Hon'ble Surinder Singh Nijjar, Chief Justice and His Companion
Justices of this Hon'ble Court;

The humble petition of the
petitioners above-named;

MOST RESPECTFULLY SHEWETH :

1. That the petitioners are the citizens of India having their
permanent residences mentioned in the Cause Title.

2. That the petitioner is No.1, is the lawyer of this Hon'ble High Court
and he is the social worker and involved in different social and other

activities in the district of Howrah. Furthermore, the Petitioner No.1 along with another petitioner filed a Writ Petition before the Hon'ble Supreme Court of India concerning the entire civic rights and pollution matter of Howrah against the State of West Bengal and Howrah Municipal Corporation for not discharging their bounden duties and/or providing civil amenities to the people of Howrah. The Writ petition being Writ Petition (Civil) No.380 of 1995 was finally disposed of on 16.04.1996 with a direction to the Hon'ble the then Chief Justice of the High Court, Calcutta to constitute a Bench to hear all the matter of the said Writ Petition including other pollution and environment matter of the West Bengal. By virtue of the order of the Hon'ble Supreme Court of India, the Environmental Bench, which is popularly known as Green Bench, was constituted. Beside above, the petitioner No.1 as co-petitioner filed other Public Interest Litigations concerning Calcutta Maidan, Victoria Memorail Hall, Shibpur Botanical Garden, Transport and Howrah Hat and other under the name and style of an organization as "Howrah Ganatantrik Nagarik Samity", which is a non-party organization of the citizens of Howrah.

So for as the petitioner No.2 is concerned, he is also a practicing advocate of this Hon'ble High Court, and he is envolved in different social works and other philanthropic activities in the area of Mathurapur and adjoining area.

3. That the petitioner states that after mysterious disappearance of Netaji Subhas Chandra Bose in 1945 he has not come back, or was not found him thereafter on the Indian soil. The people of India is ~~inter~~ indebted to him for his great role and gallant deeds of Azad Hind Fouz (I.N.A.) for Indian Independence. The Indian Independence had been snatched away from British Raj after a lot of scarifies and shedding of much blood of Indian People. As soon as the name of Netaji is heard, the Indian People not only bow down their heads with great respect from the core of their hearts where they had left their vacant place to enthrone none else Netaji but also their inquisitive mind, want to know the ultimate fate of their beloved leader great National Hero having international name and fame. In response to carion call and to unchain the motherland from the course of dependence Netaji came out of his Elgin Road's House on 17.01.1941 by throwing dust in the eyes of British Police and sprung into the struggle for Indian freedom. His relentless efforts and mysterious journey from India to Japan and launching movement for Indian freedom therefrom and formation of Azad Hind Fouz for Indian movement and his love and patriotism for India their dedication and their march to Delhi have become baland and/or mith to the people of Indian. Though Netaji and His Azad Hind Fouz could not bring the Indian Independence, but due to his movement the Himalayan

foundation of the British Raj had been shaken and had quicken the Britishers to leave India and/or to transfer the power to the Indians. Therefore, Netaji has become the concerned for all and not simply confined to particular family, or region or geographic limit. Furthermore, the movement of Netaji and his Azad Hind Fouz were not only for Indian Independence but also for the struggle for Indo-Pack sub-continent and thus, the people of the Indo-Pack sub-continent still remember Netaji, their National Hero or their beloved leader of Independence with great respect. The people have enthroned him in their core of hearts due to his insurmountable patriotism, love for the motherland, unparallel and towering personality, which made him so dear and near to the people at large of our country. It may not be out of place to mention here that the people of the aforesaid region are indebted to Netaji for independence. His movement for independence still encourages the freedom-lovers of the different parts of the world. Therefore, being Indians the petitioners consider it as one of their solemn duty to find out their National Hero and to unearth the place of death, if he has died, and where and how has died and unless the said uppermost question is resolved and/or divulged to all, the people of India and the petitioners shall be constrained to do their endeavor or efforts to unearth the hidden truth behind the said mysterious disappearance or alleged death of Netaji Subhas Chandra

Bose. The petitioners as citizens and lawyers consider it as their rights to know about their National Hero and the aforesaid question and the authorities are duty bound to appraise the people of India as to the real truth behind it and to put a permanent end to the said controversy.

4. That since after alleged disappearance of Netaji Subhas Chandra Bose in 1945, he did not come back to the Indian soil, and since there was an uproar and resentment over the news of alleged death of Netaji in Plane Crash in Taihoku, Japan and since the said issue had stricken again and again the minds of the people and the then Prime Minister Jaharlal Neharu and His Ministry, ultimately a three members Inquiry Committee vide its Notification No.F-30(26)FEA/55 dated April 5, 1956 was appointed by the Government of India. The majority report, which held that Netaji died in the aforesaid plane crash, was accepted by the Government of India. The said Committee was constituted under the Chairmanship of Shah Nawaz Khan, Parliamentary Secretary to the Ministry of Transport and Railway, and Shri Suresh Chandra Bose, elder brother of Netaji Subhas Chandra Bose and Shri S.N. Maitra, I.C.S., Chief Commissioner, Andaman and Nicobar Islands, as its members. After considering the evidence collected by the Committee, two of them (Shri Shah Nawaz Khan and Sri S.N. Maitra) came to the conclusion that

Netaji had died in the aforesaid plane crash. Shri Suresh Chandra Bose, the other member and elder brother of Netaji, submitted a dissentient report stating that there had been no plane crash involving Netaji's death. The majority report was accepted by the Government of India.

5. That the said majority view of that Committee, however, did not satisfy the public in general and several members of the Parliament in particular, who raised a demand for fresh Inquiry into the matter. Under the circumstances, the Government of India, in exercise its powers under The Commissions of Inquiry Act, 1952 constituted an Inquiry Commission Vide its Notification No.25/14/70-Poll. dated 11.07.1970 headed by Shri G.D. Khosla, Retired Chief Justice of Punjab High Court. The Commission was asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945. That commission examined some of the witness including Shri Shas Nawaz Khan and Shri Suresh Chandra Bose. That commission came to the conclusion that Netaji had succumbed to his injuries sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo. The findings of the Kholsa Commission also did not end the controversy surrounding Netaji's death. Several important people and personalities including some members of Netaji's family, Sri Samar Guha, Ex-MP and others did not accept the findings of the Khosla Commission. Since then, there had been a wide spread feeling amongst

the people that the issue or truth about Netaji's alleged disappearance/death still remained unsolved and there was a consistent demand for another inquiry into the matter. Therefore, the findings of Khosla Commission could not bring the end of controversy surroundings Netaji's death.

6. That thereafter the Report (1974) of Khosla Commission of Inquiry into the disappearance of Netaji Subhash Chandra Bose laid on the Table of the Parliament (Lok Sabha) on 03.09.1994 and in reply thereto Sri Morarji Deasi, the then Prime Minister of India, made the following statements on the floor on 28.08.1978 which were recorded at Page 455 and 456th parliamentary proceedings :-

"There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August, 1945 at Taihoku air-field during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee (sic) of enquiry headed by Shri G.D. Khosla, retired Judge of the Punjab High Court. The majority report of the first committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of

witnesses have been noticed, some further contemporary officials documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive."

7. That thereafter a Writ Petition being C.O. No.6720 of 1993 was filed by one of the lawyer in the High Court, Calcutta and the same was transferred to the Hon'ble Supreme Court of India, as Transfer case (C) NO. 7 of 1994 challenging the press communiqué of Government of India for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose posthumously and the Hon'ble Supreme ^{Court} by order dated 04.08.1997, which was later on reported in AIR 1997 Supreme Court, 3019 (Union of India- Versus - Bijan Ghosh), cancelled the said Press Communiqué as the Union of India by affidavit stated that no further steps were taken for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose. The Union of India, thus, retreated from their stand as to the death of Netaji and/or conferment of Bharat Ratna Award posthumously.

The Xerox copy of the said order dated 04.08.1997, which was later on reported in AIR 1997 SC 3019, is enclosed herewith and marked as Annexure -P/-1 to the Writ Petition.

8. That thereafter another Writ Petition being W.P. No. 281 of 1998 (Rudra Jyoti Bhattacharya – Versus - Union of India.), which was latter on reported in AIR 1999 CALCUTTA 9, was filed in the Hon'ble High Court, Calcutta seeking for direction upon the Government of India to Constitute a commission of Inquiry to launch a vigorous inquiry into the alleged disappearances or death of Netaji Subhas Chandra Bose and by order dated 30.04.1998 the Hon'ble Division Bench presided over by the Hon'ble Justice Prabha Shankar Mishra, the Chief Justice and the Hon'ble Justice B. Bhattacharya issuing high prerogative Writ directed the Union of India to launch an in-depth inquiry on the following points by appointing a commission of Inquiry as a Special case for the purpose of putting a permanent end to the controversy:-

- a) Whether Netaji Subhas Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the place crash, as alleged;
- c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- d) Whether he has died in any other manner at any other place and if so, when and how;
- e) If he is alive, in respect of his whereabouts,

The Xerox copy of the order dated 30.04.1998, which was reported in AIR 1999 CALCUTTA 9 is enclosed herewith and marked as Annexure -P/-2 to the petition.

9. That thereafter by a unanimous resolution adopted by the West Bengal legislative Assembly on 28.12.1998 demanded that the Government of India should make necessary arrangement for availability of records and documents in and outside India so that the scholars and people could have access them and also constitute a fresh inquiry commission to remove the controversy and/or mystery regarding the whereabouts of Netaji Subhas Chandra Bose.

10. That after the said unanimous resolution, the Government of India was of the opinion that it was necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance namely, the disappearance of Netaji Subhas Chandra Bose in 1945 and the Central Government by Notification No. S.O. 339 (E3) dated 14.05.1999, thus, appointed a one-man Commission of Inquiry consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Hon'ble Supreme Court of India and this Commission shall enquiry into the all facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- a) Whether Netaji Subhas Chandra Bose is dead or alive;
- b) If he is dead, whether he died in the place crash, as alleged;

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- c) Whether the ashes in the Japanese Temple are ashes of Netaji;
 - d) Whether he has died in any other manner at any other place and if so, when and how;
 - e) If he is alive, in respect of his whereabouts,

The Xerox copy of the said Notification No. S.O. 339(E) dated 14.05.1999 is enclosed herewith and marked as **Annexure - P-3** to the Writ Petition.

11. That the said Commission of Inquiry shall also examine the manner in which the exercise of scrutiny of publication touching the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.

12. That Mukherjee Commission had examined 131 Nos. of Witnesses and enclosed 308 Nos. of Exhibited documents to the Report and had gone through other related documents or records and visited various probable place of death in India and abroad such as (i) Death in Red Fort, (ii) Death in plane crash; (iii) Death in Dehradun; (iv) Death in Sheopukalan and (v) Death in Faizabad and also visited different foreign Countries and ultimately came to the following conclusion and/or finding on 07.11.2005:-

- a) Netaji Subhas Chandra Bose is dead;

- b) He did not die in Plane crash as alleged;
- c) The ashes in Japanese Temple are not of Netaji;
- d) In absence of any clinching evidence a positive answer can not be given and;
- e) Answer already given in (a) above;

12.1. In the matter of publication touching upon the death of or otherwise of Netaji, Mukherjee Commission opined/suggested that the Central Government can proceed on the basis that he is dead but did not die in the Plane crash as alleged. The said report was submitted before the Government of India on 08.11.2005.

The Xerox copy of the finding and/or conclusion of Mukherjee Commission's Report dated 07.11.2005 is enclosed herewith and marked as **Annexure - P/-4** to the Writ Petition.

13. That Mukherjee Commission report was tabled in the Parliament on 17.05.2006 and the Central Government had rejected the finding of Commission on 17.05.2006 without assigning any reason for rejection. For the Mukherjee Commission for a period of 6 years 7 months from 14.05.1999 to 07.11.2005, a huge public money was spent from the public exchequer. Since the matter^{is} involved in great public importance and since the Commission was appointed to unearth the truth of alleged disappearance and/or death of our National Hero and beloved leader

Netaji Subhas Chandra Bose, the people of India never raise any question over such expenditure, rather they are wholeheartedly and eagerly waited for a suitable and reasonable answer and/or conclusion of the said above issues or quires in terms of reference No. 2(d) of the said Commission but Mukherjee Commission in its finding dated 07.11.2005 failed to make any firm and/or concrete finding as to where, when and how Netaji has died. As a result of such finding the said controversy as to alleged disappearance or death of Netaji in 1945 did not bring its permanent end and still surviving and/or subsisting.

The Xerox copy of the order of rejection dated 17.05.2006, which was collected from the website, is enclosed herewith and marked as **Annexure P/-5** to the Writ Petition.

14. That the said controversy surrounding alleged disappearance and/or death of Netaji Subhas Chandra Bose could not bring an end and said controversy rather increased and remain unsolved when the Mukherjee Commission report tabled before the Parliament on 17.05.2006 and the Central Government by the Action Taken Report (ATR) rejected the said report without assigning any reason. The Central Government remained silent quite for a long time as to the reason for such cancellation of Mukherjee Commission's report on 17.05.2006 although there was constant and/or insisting demand from the public at large to know the reason of such cancellation or rejection.

14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, if appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard. GA

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5th of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal, 1

without mentioning the name of department to which he was attached swore the affidavit and the said official stated in paragraph No. 8 and 9 of the said Affidavit as follows:-

"8. With regard to the statement made in paragraphs 8 of the writ petition, it is submitted that the report of the Justice Mukherjee Commission was examined thoroughly and it was observed that Commission's inquiry was inconclusive in many ways, unable to provide a definitive finding on several issues and at variance with ~~past well accepted inquiry Commission's finding on several issues~~ and at variance with past well accepted inquiry Commission's findings in some critical areas: It is further submitted that Justice Mukherjee Commission did not provide any finding on point at Sub-para (d) of terms of reference mentioned in reply to para 6 above. Thus, Government of India did not find it possible to accept the findings of the Justice Mukherjee Commission that a) Netaji did not die in the plane crash; and b) the ashes in the Renkoji Temple were not of Netaji and it has accordingly been reflected in the Action Taken Report laid before the House of Parliament."

"9. With regard to the statement made in paragraphs 9 of the writ petition, it is reiterated that Government of India was not able to accept the report of the Justice Mukherjee Commission

inasmuch as the inquiry was found to be inconclusive in many ways and it had not been able to provide definite findings on several issues as mentioned in reply to Para 8 above. It is further submitted that though the Justice Mukherjee Commission concluded that Netaji was dead but he did not die in plane crash, the Commission did not answer the point (d) of terms of reference which required the Commission to find out "Whether he has died in any other manner at any other place and, if so, when and how. The commission on point(d) only said that in the absence of any clinching evidence a positive answer cannot be given. It is denied that Government of India had any control and supervision on the working of earlier Committee and Commission. It is submitted that the earlier Committee and Commission inquired into the matter independently and came out with their own independent findings. It is submitted that like the Justice Mukherjee Commission, Khosla Commission was also appointed under the Commissions of Inquiry Act, 1952. It is further submitted that although Shah Nawaz Committee could not visit Formosa as India had no diplomatic relations with that country at that time, Khosla Commission visited Taiwan (formerly known as Formosa) in connection with the inquiry and this has been recorded in chapter Eight of its report".

16.2. From the statements made by the Official of the Respondents in the above Paragraphs No. 8 and 9 of the said Affidavit-in-opposition, it is evident that for the first reason the Government of India did not find it possible to accept the finding the Justice Mukherjee Commission Report since the inquiry was inconclusive in many ways and did not provide any finding on the point of sub-para (d) of the terms of reference of Commission and further Mukherjee Commission did not answer the point (d) of terms of reference which required the Commission to find out whether he has died in any other manner at any other place and if so, when and how. The Commission on point(d) only said in absence of any clinching evidence a positive answer can not be given.

16.3. From the statements of the said Affidavit-in-Opposition it revealed that the Mukherjee Commission's report was rejected by the Central Government because of second reason that it was at variance with past well accepted inquiry commission's findings on several issued and at variance with past well accepted inquiry commission's findings in some critical areas. This second reason is not sustainable for holding Mukherjee Commission to enquire same earlier matter for the third time.

16.4 The Central Government has come with one of the reasons for rejection of Mukherjee Commission report dated 17.05.2006 is that said report did not answer of clause (d) of the terms of reference of the

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appointment but from the commission report dated 07.11.2005 it revealed that commission was not assisted or rendered co-operation by supplying materials records or files relating to alleged death or disappearance of Netaji before the commission. The commission called for the files being File No.12(226)/56-PM (investigation into the circumstances leading to the death of Subhas Chandra Bose) from the (1) Cabinet Secretariat, (2) Intelligence Bureau and (3) Research and Analysis Wing but none of the said departments supplied any file/document/record concerning Netaji's alleged death or disappearance in 1945 though the Director of Prime Minister's Office by letter dated 04.07.2000 (as per Mukherjee Commission's report) asserted that the "File No.12(226)/56-PM which contained agenda paper/cabinet decision regarding investigation into the circumstances leading to the death of Shri Subhas Chandra Bose was destroyed in 1972 in course of routine review/weeding of old record **since records of cabinet proceeding are kept permanently in Cabinet Secretariat from where they may be procured**". There was shifting of responsibilities from one department to another department but no records/file/document was ultimately transmitted before Mukherjee Commission and even the contemporary record/file/document based on which the then Prime Minister Morarji Desai made the statements in Lok Sabha in 1978 that earlier

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committee's and commission's report were not decisive were not supplied or transmitted to the Commission. Therefore, the Mukherjee Commission failed to answer under clause (d) of the terms of reference of appointment in 1999. The said difficulty has been removed and bright possibilities to access and availability of record have been reopened by the order of Central Information Commissioner.

16.5 Since the Central Government was not earlier directed to make all assistance to the Commission by supplying all files/ documents/records including "Secret" and "Top-Secret" file at the time of Commission's inquiry, the Central Government withheld all documents/ file/records relating to alleged death or disappearance of Netaji in 1945 before the Commission under the garb or veil of security of the nation and that to without filing any affidavit claiming privilege under section 123 and 162 of the Evidence Act, 1872. Therefore, all such documents are required to be produced before this Hon'ble Court and also before Commission in case of reopening or reappointing of the said commission.

^{the petitioners}
Since, did not annex voluminous Mukherjee Commission report to the writ petition, the petitioners crave leave to produce the relevant portion of the said report before this Hon'ble Court at the time of hearing if the Hon'ble Court so desire.

The Xerox copy of the said order dated 15.02.2005 passed in W.P. No.27541 (W) of 2006 is enclosed herewith and marked as Annexure P/-7 to the Petition.

E A
Ran Kojan
Tanjali

17. That the suggestion or decision of the Mukherjee Commission with regards to publication touching upon the death of or otherwise of Netaji is that the Central Government can proceed on ~~to~~^{the} basis that Netaji is dead but did not die in Plane Crash. This suggestion and/or decision might have not been accepted by the Central Government in view of stand taken by the said Government in respect of term of reference Point No.2(d) of the appointment of Mukherjee Commission and as a result such wrong publication of death, place and how died shall be continued ~~not~~^{shall} which ~~not~~ only cause serious repercussion in the sentiment or minds of the public and this unwarranted situation can not be allowed to prolong any further.

18. That the petitioners sent representation dated 11.03.2008 addressed to different concerned authorities of Central Government and sought for reappointment or reopening of the Mukherjee Commission for competition of inquiry into disappearance and/or alleged death of Netaji Subhas Chandra Bose in 1945 but till date no reply is discernible from their end or any of the concerned authorities.

The Xerox copy of the said representation dated 11.03.2008 is enclosed herewith and marked as Annexure - P/- 8 to the Writ Petition.

19. That being aggrieved by and dissatisfied with the inaction and/or absolute silence to act upon the representation dated 11.03.2008 sent by

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the petitioners for reappointing Mukherjee Commission to unearth the truth behind disappearance and/or alleged death of Netaji Subhas Chandra Bose, the petitioners beg to move this Writ Petition on the following amongst other.

GROUND

- I. For that Mukherjee Commission was appointed on 14.05.1999 by the Central Government to make a Vigorous Inquiry into the alleged death or disappearance of Netaji in 1945 in terms of reference of appointment of the said commission but after submission of report on 07.11.2005 nothing was found as to date of death and how, when and where he has died if he is dead;
- II. For that Mukherjee Commission suggested as to publication touching the alleged death or disappearance of Netaji that the Central Government can proceed on the basis that Netaji has died but not in plane crash and such presumption and/or assumption of alleged death instead of bringing the controversy into an end, it remain or left never ending among the public at large;
- III. For that the Central Government did not accept the report of Mukherjee Commission since commission did not answer the point No.(d) of the terms of reference of appointment dated 14.05.1999,

for which the said commission is required to be reappointed to complete the commission to answer the left out point No.(d) and (e) and with regard to such publication;

IV. For that order of rejection of the Mukherjee Commission Report on 17.05.2006 by Central Government is absolutely bad in law and liable to be set aside;

V. For that since Mukherjee Commission was constituted by the direction of the Writ Court under High prerogative writ issued by the Hon'ble Division Bench of the Hon'ble High, Calcutta as a special case, and the name of the Chairman of the commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India, the Central Government has got no right to unilaterally cancel or reject the findings of the commission;

VI. For that the earlier committee and commission were constituted at the instance of Central Government but Mukherjee Commission was constituted by judicial intervention and thus, it has got^a special wait-age but also having a peculiarity in respect of formation over which the Central Government can not exercise his absolute power to reject it;

VII. For that after submission of said report the Central Government can lay the report with Action Taken Report (A.T.R.) before the

parliament expressing their opinion whether the Government desire to act upon the report or not but the Central Government in no circumstance can reject the report of said commission in any manner whatsoever; thus, the rejection order is de hors in the eye of law; and to be set aside or quashed;

VIII. For that considering the matter of great public importance Mukherjee Commission was constituted to bring an end of controversy relating to alleged death or disappearance of Netaji in 1945 and huge money was spent for the same, it is, thus, required to complete commission in respect of left out points such^{as} No.(d) and (e) and publication of news of alleged death of Netaji, in terms of reference forthwith;

IX. For that since it is the great public importance, the wrong publication of news of alleged death of Netaji should not be continued and such continuation shall carry a wrong message to the new generation and public at large;

X. For that since Netaji is not confined to any particular family, or region and since he is our Great National Hero of Independence and beloved leader of our motherland or country, everybody including the petitioners have got right to set right the commission and to have judicial intervention for the same;

- XI. For that the Mukherjee Commissioner failed to answer under Clause (d) and (e) of the terms of reference due to non supply of documents/files and/or records by the Central Government before Mukherjee Commission for which the interference of the Writ court is necessary;
- XII. For that the Central Government by virtue of provision under Section 3(4) of the Commission of Inquiry Act, 1952, the Central Government can not exercise arbitrary and whimsical power to reject the report and exercise of such unfettered power is wholly illegal and without jurisdiction too;
- XIII. For that by rejection of Mukherjee Commission report arbitrarily the Central Government has violated the fundamental rights enshrined under Article 14 and 19(1) of the Constitution of India;
- XIV. For that the reasons of rejection of Mukherjee Commission report have been supplied in connection with another Writ Petition being W.P. No.27541 (W) of 2006 in Paragraph No.8 and 9 of the Affidavit-in-Opposition affirmed on 5th March, 2008 by a principal officer of the respondent after a long time of its submission and thus, it is afterthought and suffers from gross illegality;
- XV. For that when the Central Government in spite of earlier committee's and commission's reports held conclusive and well

accepted, was of the opinion that Commission for the third time necessary in 1999 for the same matter and in such situation the Central Government can not embrace or clutch the earlier reports after holding Mukherjee Commission;

XVI. For that in any view of the above matter the rejection of Mukherjee Commission Report is not in accordance with law and reappointment^{of} commission to complete the left out terms of reference point No.(d), (e) and suggestion for publication^{of} news touching Netaji's alleged death and place of death has become inevitable for greater public importance;

20. That the Central Government can not reject the Mukherjee Commission on 17.05.2006 when the Central Government felt that third commission is necessary and the commission was appointed on 14.05.1999 for the following reasons which were expressly stated in the Appointment vide Notification No.S.O.339 (E) dated 14.05.1994 issued by the Central Government of India, Ministry of Home Affairs :-

"And Whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely in disappearance of Netaji Subhas Chandra Bose in 1945".

21. That it is pertinent to mention here that the appointment of said Commission stemmed from the order/direction made by the Hon'ble High Court at Calcutta on a public interest litigation and a unanimous resolution passed by the West Bengal Legislative Assembly and for aforesaid reasons the Central Government has got no right to unilaterally reject the Commission's report on 17.05.2006.

22. That it is further stated that after statements of the then Prime Minister Monarji Desai made on 28.08.1978 on the floor of the Parliament (Lok Sabha), which were recorded at Page No.455 and 456 of the Parliamentary Proceeding (as per Mukherjee Commission Report), the earlier Committee's and Commission's Reports had become redundant and stood cancel and in spite of such position the Central Government can not embrace or clutch now the earlier Committee's and Commission's report.

23. That it is submitted that when the people of India once had spent huge money for the period from 14.05.1999 to 08.11.2005 for Commission to find out the real truth of alleged disappearance and/or death of their National Hero Netaji Subhas Chandra Bose, the said people for the second time shall not hesitate to spent further money to put a permanent end of the said controversy for which the judicial intervention of the Hon'ble Court is inevitable and earnestly solicited.

24. That it is further stated that Mukherjee Commission in its report mentioned about the visits of different foreign countries and stated the nature of information and/or documents collected therefrom but unfortunately all achieves (except six) were not visited by the Mukherjee Commission since within very short time visit for the period from September 20 to September 30, 2005 to Russian Federation and collection therefrom became impossible or impracticable and because the complete Inquiry could not be done in Russian Federation, and thus, Russian rest part of Inquiry in other achieves is further needed.

25. That it is further submitted that an interim order is required relating to publication of news of alleged death of Netaji in 1945 or met with an accident in plane crash in Taihoku and unless such interim order is granted the said wrong publication of Netaji's death shall be continued and till clinching evidence as to death and place of death of Netaji is forthcoming the said wrong publication is required to be discontinued forthwith.

26. That since Mukherjee Commission was constituted by issuing a direction under high prerogative Writ, dated 31.04.1998, and the name of the Chairman of the Commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India and since the said

Commission was constituted as a special case as of great public importance, the sovereign parliament ^{or the Central Government} can not unilaterally cancel or reject the Mukherjee Commission report dated 17.05.2006 whereas the earlier Committee and Commission were constituted at the instance of Central Government. Therefore, such rejection is absolutely illegal and not in accordance with law and liable to be set aside.

27. That it is further stated that as per provision under section 3(4) of the Commission of Inquiry Act, 1952 the Central Government has only authority either to act upon report of Commission or not but in no case reject the said report. The object of rejection of said Mukherjee Commission report is absolutely illegal and political motivation and against the said provision of law.

28. That the fundamental rights of the petitioner guaranteed under Article 14 and 19(1) of the Constitution of India have ^{been} violated due to arbitrary rejection of Mukherjee Commission's report on 17.05.2006.

29. That there is no speedy, efficacious, legal alternative remedy save and except reliefs under Writ jurisdiction.

30. That the records are located outside original civil jurisdiction of this Hon'ble Court and direction be given to produce and/or transmit all relevant records at the time of hearing and render justice to the petitioners.

31. That the petition is made on good faith to secure the ends of justice.

Under the above facts and circumstances it is prayed that your Lordship may be graciously pleased to issue -

a) a Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhas Chandra Bose in 1945 in terms of earlier reference point No.(d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents

or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the commission for completion of enquiry in order to bring an end of controversy;

b) a Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.05.2006 by the Central Government being Annexure "P-5" to the petition before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.05.2006 and render conscionable justice to the petitioners;

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c) A Rule NISI in terms of the prayer aforesaid;

d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhas Chandra Basu in 1945 till disposal of this writ application;

e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

And your petitioners, as in duty bound shall ever pray.

AFFIDAVIT

I, **Subhash Chandra Basu**, Son of Late Surendra Nath Basu, aged about 43 years, by faith Hindu, by occupation Advocate, residing at 86, Sadar Boxi Lane, P.O. & P.S. Howrah, District - Howrah, Pin-711101, do hereby solemnly affirm and say as follows :-

1. That I am the writ petitioner of the instant case and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in paragraph Nos. 1, 2, 8, 10, 16 (P), 18, 27 to 31, are true to my knowledge, those made in paragraphs Nos. 3 to 7, 11 to 15 (P), 20 to 22, are true to my information derived from record, which I verily believe to be true and the rest of my respectful submission before the Hon'ble Court.

Prepared in my office

Sd/- S. C. Basu,

Advocate.
Petitioner-in Person

Sd/- S. C. Basu

Deponent is known to me

Sd/- N. K. Ghosh

Clerk to : Mr.

Advocate

Solemnly affirmed before me on
this the 28th day of April, 2008.

Sd/- Allise'fle
Commissioner.

AFFIDAVIT

I, **Sri Pankaj Halder**, son of Sri Late Arabinda Halder, aged about 32 years, by faith Hindu, by occupation Advocate, residing at Village - Mathurapur, Post Office and Police Station - Mathurapur, District - South 24-Parganas, do hereby solemnly affirm and say as follows :-

1. That I am the writ petitioner of the instant case and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in paragraph Nos. 1, 2, 3, 10, 16(p), 18, 27 to 31, are true to my knowledge, those made in paragraphs Nos. 3 to 7, 11 to 16(p), 20 to 22, are true to my information derived from record, which I verily believe to be true and the rest of my respectful submission before the Hon'ble Court.

Prepared in my office

Sd/- Pankaj Halder
 Advocate.
 Petitioner in Person

Solemnly affirmed before me on
 this the 28th day of April, 2008.

Sd/- Pankaj Halder

Deponent is known to me

Sd/- N.K. Ghosh

Clerk to : Mr.

Advocate

Sd/-
 Commissioner.

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Union of India v. Bijan Ghosh

S. C. 3019

forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

3. More than seven months have elapsed since the directions were issued. Through these petitions, Dr. Singhvi, the learned Amicus Curiae, who had assisted the Court in the main petition, seeks a direction, calling upon the Director General of Police and the Home Secretary of every State/Union Territory to report to this Court compliance of the above directions and the steps taken by the All India Radio and the National Network of Doordarshan for broadcasting the requirements.

4. We direct the Registry to send a copy of this application, together with a copy of this order to respondents 1 to 31 to have the report/reports from the Director General of Police and the Home Secretary of the concerned State/Union Territory sent to this Court regarding the compliance of the above directions concerning arrestees. The report shall indicate in a tabular form as to which of the "requirements" has been carried out and in what manner, as also which are the "requirements" which still remain to be carried out and the steps being taken for carrying out those.

5. Report shall also be obtained from the Directors of All India Radio and Doordarshan regarding broadcasts made.

6. The notice on respondents 1 to 31, in addition, may also be served through the standing counsel of the respective States/Union Territories

in the Supreme Court. After the reports are received, copies of the same shall be furnished to the Advocate on Record for Dr. Singhvi, Ms. Suruchi Agrawal, Advocate.

7. The reports shall be submitted to this court in the terms, indicated above, within six weeks from today. The matters shall be put up on board for monitoring, after seven weeks.

Order accordingly.

AIR 1997 SUPREME COURT 3019

(From : Calcutta)*

Mrs. SUJATA V. MANOHAR AND
G. B. PATTANAIK, JJ.

Spl. Leave Petn. (C) No. 628 of 1994 with
Transferred Case (C) No. 7 of 1994, D/- 4-8-1997.

Union of India. Petitioner v. Bijan Ghosh and
others, Respondents.

(A) Constitution of India, Arts. 18, 136 — Award of decorations by President — Press communique announcing conferment of award of Bharat Ratna Posthumously on Netaji Bose — Unhappiness expressed by members of public and members of Netaji's family at such announcement — Govt. of India in deference to sentiments expressed not proceeding further to confer award and treating the matter as closed — Objection to word 'posthumously' used in press communique therefore not considered — Press communique declared as cancelled.

(Para 6)

(B) Constitution of India, Art. 18 — Notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres./55 Cls. 1, 8, 10 — Bharat Ratna, Padma Vibhushan, Padma Bhushan etc. — Award of — Annulment of — Procedure.

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of

*C. O. No. 6720 of 1993, D/- 6-12-1993 (Cal.)

HO/HO/S629/97/VVG/CSL

the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India.

(Para 6)

Altaf Ahmad, Addl. Solicitor General, B. Parthasarathi, Hemant Sharma, P. Parmeswaran, Advocates with him for Petitioner; In person for the Respondent. F. S. Nariman, M. N. Krishnamani, Sr. Advocates, Rudra Bhattacharjee, (Subhash Sharma), Advocates for Ms. Sarla Chandra, Advocate with them for Respondents. V. P. Saini, In-person for Respondent.

ORDER :— The proceedings which are before us have arisen out of a press communique which was issued from the Rashtrapati Bhawan, New Delhi and was published on 23rd of January, 1992. It is to the following effect :—

"The President is pleased to confer the award of Bharat Ratna posthumously on Shri Subhash Chandra Bose."

On reading this press communique the sentiments of many people were hurt. The petitioner filed a writ petition in the Calcutta High Court praying, inter alia to recall, rescind cancel and revoke the 'Bharat Ratna' purported to be conferred on Netaji Subhas Chandra Bose posthumously by the press communique dated 22nd January, 1992 and forbear from handing over to any person or persons, institution or institutions any document or insignia or symbol containing the impugned 'Bharat Ratna' or any communication bearing reference thereto for acceptance or preservation or display or for any other purpose. The petitioner also prayed for a direction that respondents 1 and 2 declare full particulars of the whereabouts of Netaji Subhas Chandra Bose from 18th of August, 1945 till date on the basis of records and information at their disposal dehors the reports and findings of the Netaji Inquiry Committee 1956 and the Netaji Inquiry Commission, 1970, and to institute a proper investigation into such whereabouts with a view to locating him, if alive, and bringing him to India with due honour and dignity and if he is found to have died, to furnish full particulars of his stay from 18th August, 1945 onwards and his subsequent death and the place and manner of disposal of his mortal remains. There are various reliefs prayed for which are connected with these reliefs.

2. The petitioner has taken strong exception to the use of the word 'posthumously' in the press communique and has submitted that the Government of India has not officially accepted the alleged report of the death of Netaji Subhas Chandra Bose in an air-crash in Taiwan on 18th of August, 1945. Without any specific report of the death of Netaji Subhas Chandra Bose being accepted by the Government of India, it cannot and should not confer on him any title with the description 'posthumously'. In this connection elaborate averments have been made about the Netaji Inquiry Committee, 1956 which was then constituted and the report of this Committee as also the Netaji Inquiry Commission, 1970 constituted under the Commissions of Inquiry Act, 1952. It is contended that a further inquiry should be held in this connection and in the absence of such an inquiry the award should not be conferred posthumously.

3. The petitioner has also raised another objection to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose. It is contended that an award or a title has its own limitations. When a personality is higher and greater than any award or title, conferring of such honour on that person becomes ridiculous and it becomes an act of "carelessness" to classify such a person as an equal of others who have already been awarded such title or who may be awarded such a title in future.

4. It seems that the family members of Netaji Subhas Chandra Bose also conveyed to the Government of India their unhappiness at the announcement and expressed their unwillingness to accept such an award.

5. In view of the sentiments expressed by the members of public and the family members of Netaji Subhas Chandra Bose in connection with the press communication, the Government of India did not proceed further in the matter. In their affidavit which is filed in these proceedings, they have stated that the matter was treated as closed. The original petitioners have expressed their anguish at this statement made on affidavit by the Government of India and have submitted that the award/press communication should be withdrawn.

6. We have heard the original petitioners and the learned advocates appearing on behalf of some

of the petitioners. In order to clarify the position, Mr. Altaf Ahmad, learned Additional Solicitor General has drawn our attention to notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres. 55 setting out the Statutes and Rules relating to the awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padmashri. It sets out, inter alia, as follows :—

“1. The decoration shall be conferred by the President of India by a Sanad under his hand and seal.

8. The names of the persons, upon whom the decoration is conferred, shall be published in the Gazette of India and a register of all such recipients shall be maintained under the direction of the President.

10. The President may cancel and annul the award of the decoration to any person and thereupon his name shall be erased from the Register and he shall be required to surrender the decoration and the Sanad. But it shall be competent for the President to restore the decoration and Sanad and to withdraw the orders of cancellation and annulment. The notice of cancellation or restoration in every case shall be published in the Gazette of India.”

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India. It is pointed out by the Additional Solicitor General that the award has to be conferred by first publishing the name of the recipient in the Gazette of India and entering it in the register of recipients. In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the

award and hence the name was not published in the Gazette of India, nor was it entered in the register of recipients, nor was any decoration conferred by the President by a Sanad under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia, of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in these proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word ‘posthumously’ has been justifiably used in the press communique or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communique. Since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of.

Order accordingly.

AIR 1997 SUPREME COURT 3021

K. RAMASWAMY AND D. P. WADHWA, JJ.*

Writ Petn. (C) No. 824 of 1988 with Writ Petn. (Cri.) Nos. 745-54 of 1990, D/- 9-7-1997.

Gaurav Jain, Petitioner v. Union of India and others, Respondents.

(A) Constitution of India, Art. 32 — Public

*The judgments are printed in the order in which they are given in the Certified Copy ... Ed.

GO/HO/S 573/97/VNP/RTT

contract, and the tenant cannot claim that his tenancy is governed by the contract and not by the Rent Act.

30. Lastly, we are also of the view that as clause (v) of the disputed document (Exhibit No. 1) clearly comes within the ambit of Section 3(1)(k) of the West Bengal Premises Tenancy Act, 1956, the question of service of notice under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 of the plaintiff also does not arise at all.

31. We, therefore, concur with the findings of the learned trial Judge and the appeal, accordingly, stands dismissed without any order as to costs.

32. The prayer for stay of operation of the order as made by Mr. Sadhan Roychowdhury, learned Advocate for the appellant, however, is refused.

A. B. MUKHERJEE, J. :- 33. I agree.
Appeal dismissed.

AIR 1999 CALCUTTA 9

PRABHA SHANKER MISHRA, C.J. AND B. BHATTACHARYA, J.

Rudra Jyoti Bhattacharjee and another, Petitioners v. Union of India and others, Respondents.

W.P. No. 281 of 1998, D/- 30-4-1998.

Constitution of India, Arts. 226, 19(1) — Public interest litigation — Death of Netaji Subhashchandra Bose — No conclusive proof — Publications concerning his freedom struggle and death — Likelihood of being defamatory and causing public disturbance — Appropriate directions issued to Govt. of India.

In instant public interest litigation the petitioner has stated and in doing so he has only echoed and joined a multitude of Indians that for his gallant deeds for independence of India, Netaji Subhashchandra Bose is recognised as one of the greatest National leaders of international importance; his mysterious disappearance on and from August 1945 is still wreaking and agitating the minds of the citizens of India and the story which was once floated that he died in the alleged plane crash on 18th August, 1945 at Tai Hoku in Japan is not accepted by the Indians. It was not possible

for the Govt. of India to take any action at the present on the suggestion of Gen. Fujiwara of Japan to bring the ashes said to be of Netaji lying at Renkoji Temple to India. Some publications in respect of which mention is made by the petitioners according to them are per se defamatory to the National Hero Subhas Chandra Bose. One of the most cherished rights of the Indians is the freedom of speech and expression, yet it is important that this right is not exercised to disturb public order or cause incitement to offence or defamation.

(Paras 4, 5, 19)

It was felt that there is a need to give a fresh look to such publications and proscribe such books or such portion of the books which spelt one way or the other on the subject of the death of Netaji Subhas Chandra Bose's pre-independent activities in respect of which the Government of India is yet to complete enquiry. All fresh or new publications, shall also need a similar scrutiny and all such scrutiny shall be made keeping in view Art. 19(1)(a) read with Art. 19(2) of the Constitution of India.

(Para 19)

For the reasons aforementioned, directions as follows were issued :— (1) The Govt. of India shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Enquiry as a special case for the purpose of giving an end to the controversy (a) whether Netaji Shbhas Chandra Bose is dead or alive; (b) if he is dead whether he died in the plane crash, as alleged; (c) whether the ashes in the Japanese temple are ashes of Netaji; (d) whether he has died in any other manner at any other place and, if so, when and how; (e) if he is alive, in respect of his whereabouts. (2) The Govt. shall take the people of India in confidence. (3) The Govt. shall at appropriate level examine/scrutinise all publications pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence. (4) The Govt., if so advised, shall inform all publication Houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above.

(Para 20)

Cases Referred : Chronological Paras
W.P. No. 1805 of 1997, D/- 7-4-1998 (Cal) 7, 8
AIR 1997 SC 3019 : 1998 WBLR (SC) 9 : 1997
AIR SCW 3052 7, 11

Rudra Jyoti Bhattacharjee in person; M. B. Sarkar, Sr. Advocate, for Respondents.

PRABHA SHANKER MISHRA, C.J.:— It is difficult for us to pick up the threads to have any well-knit statement of fact from the contents of the instant petition yet, after our several attempts and after hearing the petitioner in person and the learned Advocate representing the respondents Nos. 1 to 4, we have been able to gather some bits from here and some bits from there to have some comprehension of the narration in the petition.

2. The Asiatic Society, Calcutta is impleaded as one of the respondents. We do not, however, find any reason why any prerogative order and/or direction be issued or made against the Society. Since, in our view, the Society is not a necessary party, we are not persuaded to issue any notice to it, name of the 5th respondent is accordingly delated and expunged.

3. Alleged mysterious disappearance of Netaji Subhas Chandra Bose, according to the petitioner requires direction inter alia, to the respondents herein (1) to classify and disclose all documents relating to Netaji Subhas Chandra Bose including the Indian National Army; (2) to make a categorical statement whether name of Netaji was and still is in the list of war criminals drawn up after the Second World War and issue a press communique to the said effect; (3) not to allow any agency or publisher or any person to publish the story of the death of Netaji Subhas Chandra Bose in the alleged plane crash on 18-8-1945; (4) to disclose the stand of the Government of India regarding Netaji Subhas Chandra Bose if he is found on Indian soil — “whether Government of India will welcome him or hand over him to the allied forces for trial as war criminal and make a press communique to that effect” and (5) to produce and or transmit all the records, files and documents as mentioned in Annexure ‘F’ to the petition about disappearance of Netaji Subhas Chandra Bose since August 18, 1945 and subsequent thereto.

4. Petitioner has stated and in doing so he has only echoed and joined a multitude of Indians

that for his gallant deeds for independence of India, Netaji is recognised as one of the greatest national leaders of international importance that his mysterious disappearance on and from August 1945 is still wreaking and agitating the minds of the citizens of India and that the story which was once floated that he died in the alleged plane crash on 18th August, 1945 at Tai Hoku in Japan is not accepted by the Indians.

5. One British Intelligence Officer allegedly informed one Amrik Singh Gill, who was awaiting execution of death sentence, on 19th August, 1945 that Netaji died in an aircrash on 18th August, 1945. Gill published the said information in a magazine of Netaji Centre Publication at Kuala Lumpur. The same was reprinted in Jayshree, a Bengali magazine, in its Azad Hind Golden Jubilee number in October, 1993. Delhi Radio on 21st August, 1945 made the announcement that Netaji died in an aircrash on 18th August, 1945 (Ref., “A Springing Tiger” by Hue Toy, a Military Intelligence Officer of British Army). Quite a few publications and information to the above effect followed and when the controversy thickened and mystery deepened, the Government of India constituted Netaji Enquiry Committee in the year 1956 with Sri Shah Nawaz Khan as the President and Sri Suresh Chandra Bose and Sri S. N. Moitra as Members. This was followed by appointment of of a Commission of Enquiry in the year 1970. Netaji Enquiry Committee as well as the Commission of Enquiry submitted their reports. On 28th August, 1978, however, the then Prime Minister of India made a statement at the floor of the Lok Sabha that, “Shah Nawaz Committee and Khosla Commission hold the report of Netaji Subhas Chandra Bose’s death following a plane crash as true. Since then reasonable doubts have been cast on the correctness of the two reports and various important contradictions in the testimony of the witnesses have been noticed. Some further contemporary official records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive”. According to the petitioner, the above statement of the then Prime Minister of India was a virtual and simultaneous burial of the Netaji Enquiry Committee and Enquiry Commission reports. However, on 11th April, 1979 the then Minister of State for Home

Affairs made a statement on the Lok Sabha in reply to a question that was raised on the request by General Fujiwara of Japan for bringing the alleged ashes of Netaji from Renkoji Temple to India. "In the light of reasonable doubts cast on the correctness of the conclusions reached in two enquiry reports on the death of Netaji Subhas Chandra Bose, the Government finds it difficult to accept that the earlier conclusions are decisive. It will, therefore, not be possible to take any action at the present on the suggestion of Gen. Fujiwara to bring the ashes". According to the petitioner waxing and waning attitude and behaviour of the Government of India and other responsible persons have almost betrayed the design of precipitating and perpetuating the myth of the death of Netaji Subhas Chandra Bose in the alleged plane crash as reality without there being any serious effort to establish by hard and genuine evidence.

6. The petition with the facts as above, however, is littered with the statement that the then Government of India (British) after the Second World War declared Netaji a war criminal and following the independence and almost simultaneously to India's taking a seat/place in the United Nations Organisation ratified and agreed that war criminals of friendly countries would be delivered by the country holding them; thus agreeing that India would deliver all war criminals of the Second World War to the Government of Great Britain, and since Subhas Chandra Bose was declared a war criminal by the Great Britain and India ratified and agreed to do so, it still holds Subhas Chandra Bose as War Criminal. The petitioner, in short, in this behalf has been agitating and asking — Does Government of India still hold Subhas Chandra Bose as a War Criminal and thus does it behove the Government to treat Subhas shabbily as above, who while alive as well as in death is the embodiment of the ideals and images of a true Indian for all fellow Indians.

7. We have summarised above the material facts upon which the petitioner has sought for the reliefs as indicated above and omitted to mention particulars of information in any detail with respect to either statements or works about the death of Netaji as alleged and the mysterious disappearance, or on the Government of India even unwittingly as alleged, still holding that Netaji is a war criminal. Narration of the facts,

however, shall remain inconclusive if we do not refer to a recent case (W.P. No. 1805 of 1997) which has been disposed of by a Bench of this Court on 7th April, 1998. The said petition was filed as vox populi when newspapers like the Bartaman in its publication of 23rd August, 1997 and the Anandabazar in its publication of 27th August, 1997 published/reported that the then Defence Minister had stated that he would bring the ashes of Sri Subhas Chandra Bose from Renkoji Temple of Japan. After referring to the judgment of the Supreme Court in Union of India v. Bijon Ghosh, 1998 WBLR (SC) 9 : (AIR 1997 SC 3019) and the publications aforementioned, this Court in its judgment in the said case has stated as follows (at Page 3021 of AIR) :—

"When the Government of India intended to honour him by conferring the Bharat Ratna Award and used in Press communique the expression 'posthumously', a petition under Article 226 of the Constitution of India was moved and against an interlocutory order therein a Special Leave Petition was preferred before the Supreme Court We have no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose. Except in such proceedings in which any legal presumption is available, for purposes as the acceptance of ashes as that of Netaji Subhas Chandra Bose, it is not possible to accept that he died on 18-8-1945 or at any time thereafter unless there is conclusive evidence. Any ashes of a dead person in the absence of such evidence cannot be accepted as that of Netaji by the people of India. It would be difficult to accept that the Defence Minister of the country has made a statement of such consequences without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported and the petitioner has moved this Court as he is, as stated, alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at Renkoji Temple, Japan. Before closing the proceedings, however, in view of the assurance that nothing of the sort is likely to be done by the Government of India, we are inclined to order that before accepting the ashes which are allegedly kept at the

Renkoji Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence."

8. Thus, on the questions of death of Netaji, that he died in the plane crash, that his ashes are kept at Renkoji Temple of Japan, that Government of India is almost accepting that Netaji has died and that his ashes are being brought to India, in our view, are fully answered by the judgment in W.P. No. 1805 of 1997 dated 7th April, 1998. What needs, however, to be clarified for all concerned to bear in mind that Government of India did realise that full facts and evidence were required to be gathered from every person and place and it appointed first the Enquiry Committee and next Enquiry Commission. After the reports of the Committee and the Commission were submitted, the then Prime Minister made categorical statement in the Lok Sabha that since the reports, reasonable doubts have been cast on their correctness, various important contradictions are noticed in the testimony of the witnesses and further contemporary official documentary reports have become available, "in the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive

9. Official stand of the Government as expressed in the Lok Sabha on 28-8-1978 is reiterated on 11-4-1979 by the then Minister for State of Home Affairs. Two deviations/aberrations, however, occurred first when Government of India intended to honour Sri Subhas Chandra Bose by conferring 'Bharat Ratna' Award and used in the Press Communique the expression posthumously and secondly recount by Defence Minister of the country made a statement that Government of India intended to accept the factum of death of Subhas Chandra Bose and bringing the ashes which are stacked and kept at Renkoji Temple in Japan.

10. British quit India and the country got its independence but with Dominion Status in the British Empire on 15th August, 1947. The people of India, however, resolved to constitute it into a Republic and their Constituent Assembly on 26th day of November, 1949 adopted, enacted and

gave to the People the Constitution of India, to be effective on and from 26th of January, 1950. On 15th of August, 1947, India, indeed, achieved Independence and inherited the British sovereignty as well as British legacy. When the people, however, adopted the Constitution and established the Republic, India unshackled itself from the yoke of past to start afresh with the goal of justice, Social, Economic and Political, Liberty of thought, expression belief, faith and worship, Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation and guaranteed Equality of law and equality before law to all persons and freedoms of speech and expression, assembly peaceably and without arms, of association of Union and of movement freely throughout the territory of India and to reside and settle at any part of the territory of India. Article 13 of the Constitution declared laws inconsistent with or in derogation of the Fundamental Rights in Part III of the Constitution void and inhibited the State from making any law which took away or abridged the rights conferred by Part III.

11. The status Netaji Subhas enjoys in the Indian Republic is that of a person who is a Bharat Ratna. He enjoys a greater status in the hearts and minds of the people of India than a mere title which the Government bound by the rules of procedure intended to confer upon him. The expression 'posthumously' in the Communique of the Government of India when Bharat Ratna was to be conferred indeed was a sad and irresponsible act at some executive level of the Government which caused wide-spread resentment and as noticed by the Supreme Court in Union of India v. Bijon Ghosh, AIR 1997 SC 3019 (supra), "in deference to the feelings so eloquently expressed in this proceedings and which have no doubt conveyed to the Union of India, the award was in fact not conferred and the proposal was dropped". Another aberrative act caused the filing of W.P. No. 1805 of 1997 and this Court has ordered, "before closing the proceedings, however, in view of the assurance that nothing of the sort is likely to be done by the Government of India we are inclined to order that before accepting the ashes which are allegedly kept at the Renkoji Temple at Japan as that of Netaji Subhas Chandra Bose, the Government of

India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence."

12. The two aberrations are outside the Lok Sabha, true, one which carried the expression 'posthumously' was a Communique of the Government of India which is deference to the popular feeling was withdrawn but the other, that is, to say the statement of the Defence Minister in respect of the ashes of Netaji was neither a statement in any of the Houses of Parliament nor in any Communique of the Government of India. That was out and out a statement most unwittingly made by the Defence Minister of the country. The Official stand of the Government of India, thus, is that notwithstanding the reports of the Enquiry Committee and the Commission of Enquiry aforementioned, there are doubts as to the death of Netaji in the manner as reports indicated and that there was/is a need to have further probe and enquiry to conclusively establish that Netaji has died, that he died in the plane crash, as alleged, and that his ashes are lying in some temple in Japan. With such specific stand when the Government has informed the Parliament more than once as above and no further enquiry or probe has yet been held, it is beyond imagination that Government of India without further or fresh enquiry and/or probe would accept the factum of death of Netaji Subhas and/or of the alleged air-crash death and/or the ashes being kept at a temple in Japan.

13. Learned Counsel for the respondents has categorically assured the Court that Government of India has maintained and is maintaining even now that a further/fresh enquiry/probe is required and the information that Netaji died in the plane-crash on August 18, 1945 is full of loopholes, contradictions and therefore inconclusive.

14. It is difficult to perceive why the petitioner has been harping on Netaji being a war criminal for the Indian Republic and its people as declared by the British Government in year 1945 or in year 1946. True people of India fought along with the British against Japan, German and Italy but they continued their war of Independence against them until they quit India on 15th of August 1947. For British, one who stood against

their oppressive acts was a criminal. For Indians, he was a freedom fighter. For British, who supported their war efforts friends and allies. For India all who stood against aggression and subjugation were friends.

15. Netaji Subhas Chandra Bose had launched his own war for Independence of India, formed Indian National Army (I.N.A.) marched ahead to free the people of India from subjugation and reached Indian territory of the Andamans and Kohima, Manipur. His was an army of Indians, for the Indians and for the Independence of India. Such a hero however when India achieved its independence was mysteriously missing. It (India) has been waiting to welcome its Hero. He has, however, not been found yet.

16. People in India are not going, it is clear from the aforementioned events, to accept that their hero who led the first national Army is dead unless they are convinced after seeing conclusive evidence in this regard. Who then will call Netaji a war criminal? Any Indian public except a traitor, a person who does not have the deference and love for the country and its heroes alone can do so. We do not have any hesitation in concluding that the statements in documents which are lying archives which are to the effect that Netaji is a war criminal and all persons who have been saying such a thing are relics of the British Raj. The petitioner shall be well advised to disabuse himself of even remotest/faintest idea that the people of India, and the Government of India since it is the Government of the People of India, can ever in dreams would think of Netaji as a war criminal or a traitor. As we understand sane and understanding people in Great Britain too take him as one of the ablest sons of India and one of the most loved by the People of India. We see thus no reason why any Rule be issued to declassify and disclose all documents relating to Netaji Subhas Chandra Bose including Indian National Army until such inquiry as is derived is held. Declassification and disclosure of the contents of sensitive documents cannot be insisted upon unless one is satisfied that such disclosure would not be against the interest of the sovereignty and integrity of India, the Security of the States, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court or defamation or would not cause incitement to an offence (see Article 19 of the

14 Cal.

Rudra Jyoti Bhattacharjee v. Union of India

A. I. R.

Constitution) and if made would not harm the public interest. In the instant case we have reasons to believe, any such disclosure would not help the cause of the public at all.

17. We see absolutely no reason for any statement from the respondents whether Netaji Subhas Chandra Bose is still in the list of war criminals drawn after the Second World War. As we have indicated above, no one much less people of India, would allow any person to treat Netaji as a war criminal. For, Indians Netaji is one of the great patriots.

18. It is difficult similarly to imagine how any Indian would think that Netaji would not be welcome on the Indian soil when Indians hold him amongst the best a few sons of India. The petitioner, as we have observed earlier, has been ill-advised to seek any disclosure from the Government of India or such information whether government of India would welcome him or hand him over to the Allied Forces for trial as war criminal. Such misconceived ideas, instead of helping the cause, as we have observed above, would cause dissensions and resentments and unnecessary bickerings. We are inclined however to take notice of one aspect of the matter : There has been no positive attempt it seems after the statement by the Prime Minister in the year 1978 and by the Minister of State for Home Affairs in 1979 that the findings in the reports of Netaji Enquiry Committee and Commission of Enquiry were not conclusive and decisive for any further or fresh enquiry and no serious effort in this behalf has been made. It seems lapses have occurred from time to time and public at large is dissatisfied. It is, therefore, necessary that respondents are told that their silence may not be appreciated in the matter and they for obvious reasons, as indicated above, should proceed in some effective manner to enquire into the circumstances of the death, whether Netaji has died and if he is alive where is he, with due despatch. Various publications some saying Netaji has died, some saying — No, he has not, some accepting the plane crash story, some not accepting it, some suggesting that the ashes in the temple in Japan are that of Netaji and others not accepting, some believing, and seriously, that Netaji is still alive and is available in some part of the world cause confusion and sometimes irritation and anger in public. No publication which

would affect the friendly relations with foreign States, public order, the sovereignty and integrity of India, cause defamation or incitement to an offence should be permitted. We have reasons to think that such irresponsible publications do sometimes affect public order and cause incitement to violence.

19. Some publications in respect of which mention is made by the petitioners which are per se defamatory to the National Hero Subhas Chandra Bose. One of the most cherished rights of the Indians is the freedom of speech and expression, yet it is important that this right is not exercised to disturb public order or cause incitement to offence or defamation. We have not, however seen such publications as a whole except such excerpts which are quoted by the petitioner for forming any conclusive opinion that books already published need to be proscribed. Yet we are satisfied that there is a need to give a fresh look to such publications and proscribe such books or such portion of the books which spent one way or the other on the subject of the death of Netaji Subhas Chandra Bose's pre-independent activities in respect of which the Government of India is yet to complete enquiry. All fresh or new publications, in our view, shall also need a similar scrutiny and all such scrutiny shall be made keeping in view Article 19(1)(a) read with Article 19(2) of the Constitution of India and the observations made above.

20. For the reasons aforementioned, we are inclined to direct as follows :-

(1) Respondents shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Enquiry as a special case for the purpose of giving an end to the controversy

(a) whether Netaji Subhas Chandra Bose is dead or alive;

(b) if he is dead whether he died in the plane crash, as alleged;

(c) whether the ashes in the Japanese temple are ashes of Netaji;

(d) whether he has died in any other manner at any other place and, if so, when and how;

(e) if he is alive, in respect of his whereabouts.

(2) The respondents shall follow for the said purpose the directions of this Court given in W.P. No. 1805 of 1997 namely, to take the people of

India in confidence;

(3) Respondents shall at appropriate level examine/scrutinise all publications pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence;

(4) Respondents, if so advised, shall inform all Publication Houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above.

21. This disposes of the writ application..

B. BHATTACHARYA, J. :— 22. I agree.
Order accordingly.

AIR 1999 CALCUTTA 15

BHAGABATI PROSAD BANERJEE

AND RONOJIT KUMAR MITRA, JJ.

Moulana Mufti Syed Md. Noorur Rehman Barkati and others, Petitioners v. State of West Bengal and others, Respondents.

W.P. No. 8146(W) of 1997, D/- 4-3-1998.

(A) Constitution of India, Art. 25 — Restrictions on use of microphone and loud speakers at time of giving Azan — No violation of right under Art. 25 is involved.

Imposition of restrictions on use of microphones and loud speakers at time of Azan is not violative of right under Art. 25.

(Para 25)

Azan is certainly an essential and integral part of Islam but use of microphone and loud-speakers are not an essential and an integral part. Microphone is a gift of technological ages, its adverse effect is well felt all over the world. It is not only a source of pollution but it is also a source which causes several health hazards. Traditionally and according to the religious order, Azan has to be given by the Imam or the person incharge of the Mosques through their own voice, this is sanctioned under the religious order. Azan is not a form of propagation but it is an essential and integral part of religion to meet at the prayer from a call being made through

Azan.

(Paras 25, 26, 27)

(B) Constitution of India, Arts. 14 and 19(1)(a) — Restrictions on use of microphone at time of Azan by authorities in West Bengal — Other States not imposing such restrictions — No discrimination results.

(Para 27)

(C) Environmental (Protection) Act (29 of 1986), S. 3 sound pollution — Citizens have right to be protected against excessive sound under Art. 19(1)(a) of the Constitution.

Constitution of India, Art. 19(1)(a).

(Para 27)

Cases Referred : Chronological Paras

1997 (2) Cal LJ 468	14, 18
(1996) 4 All ER 903 R v. Secy of State for Transport ex. p.	14
(1995-96) 100 Cal WN 617	1, 7, 8, 11
AIR 1989 SC 1933	18
AIR 1989 SC 436	18
AIR 1987 SC 1086	18
AIR 1983 SC 75 : 1983 Tax LR 2407	18
AIR 1961 SC 1402	25
AIR 1954 SC 282	25

Kalyan Bandopadhyay and Kishore Dutt, for Petitioners; Roy Choudhury, for Respondents. M. C. Das and Mukherjee, for Pollution Control Board.

BHAGABATI PROSAD BANERJEE, J. :— This matter was assigned by the Hon'ble Chief Justice before this Bench. The writ application has been filed by Moulana Mufti Syed. Md. Noorur Rehman Barkati, Imam and Khatib. Tipu Sultan Shahi Masjid, Dharamtala and Chairman Gharib Nawaz Educational and Charitable Society, Calcutta and eight others for a declaration that Rule 3 of the Environmental (Protection) Rules, 1986 vis a vis Schedule III of the said Rule do not apply in case of Mosques more particularly at the time of call of Azan from the Mosques and for the further declaration that Schedule III of the Environmental (Protection) Rules, 1986 is ultra vires Articles 14 and 25 of the Constitution. The petitioners also prayed for withdrawal of all conditions and restrictions which were notified by the Police and other authorities pursuant to the order passed in the case of Om Birangana Religious Society v. State, reported in 100 CWN 617.

"P/3"

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 14.5.99

S.O.339(E) – Whereas the Shah Nawaz Khan Committee and the Khosla Commission of Inquiry appointed by the Government of India in April, 1956 and July, 1970 respectively to inquire into and to report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok about the 16th August, 1945, his reported death as a result of an aircraft accident, and subsequent developments connected therewith had come to the conclusion that Netaji Subhas Chandra Bose met his death in an air crash;

And, whereas there is a widespread feeling among the public that the issue of finding the truth about Netaji's death still remains;

And, whereas there has been a consistent demand for a further inquiry into the matter;

And, whereas the Calcutta High Court also directed the Government of India for a vigorous inquiry in accordance with Law, if necessary, by appointing a Commission of Inquiry for the purpose of giving an end to this controversy;

And, whereas a Motion was adopted on 24.12.1998 by the West Bengal Legislative Assembly wherein a demand has been made for a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose;

And, whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely, the disappearance of Netaji Subhas Chandra Bose in 1945;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Supreme Court of India.

2. The Commission shall inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

3. The Commission shall also examine the manner in which the exercise of Scrutiny of Publications touching upon the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.
4. The Commission shall submit its report to the Central Government as soon as possible but not later than six months from the date of publication of this notification.
5. The headquarters of the Commission shall be at New Delhi, and/or any other place as determined by the Commission.
6. The Central Government is of the opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the said Commission and the Central Government in exercise of the powers conferred by sub-section (1) of the said section 5, hereby directs that all the provisions of the said sub-sections (2) to (5) of that section shall apply to the Commission.

Sd/- .

(NIKHIL KUMAR)
SPECIAL SECRETARY (ISP)

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123,

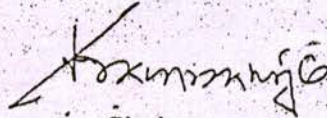
Chapter Five

Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged;
- (c) The ashes in the Japanese temple are not of Netaji;
- (d) In absence of any clinching evidence a positive answer cannot be given;
and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon its above findings - that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.


Chairman

Kolkata,
November 07, 2005

Mukherjee Commission

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The **Mukherjee Commission** refers to the one-man board of Mr. Justice Manoj Mukherjee , a retired judge of the Supreme Court of India which was instituted in 1999 to enquire into the controversy surrounding the reported death of Subhas Chandra Bose in 1945.

On April 30, 1998 that the High Court of Calcutta gave orders to the then BJP-led Government to "launch a vigorous inquiry as a special case for the purpose of giving an end to the controversy".^[1]

The purpose of the commission was the ascertain the following:

1. Whether Netaji Subhas Chandra Bose is dead or alive;
2. If he is dead whether he died in the plane crash, as alleged;
3. Whether the ashes in the Japanese temple are ashes of Netaji;
4. Whether he has died in any other manner at any other place and, if so, when and how;
5. If he is alive, in respect of his whereabouts.

The commission is also the first to probe into the much publicized Soviet-connection. The basics of which are that Netaji Subhas Chandra Bose did indeed survive the end of the Second World War, and detained in a Siberian camp in the late 1940's. A former Russian General swore under oath to the commission that he had seen a true Soviet-cabinet paper detailing and discussing a "living" Subhas Chandra Bose, one year after his supposed death.

Many, however, feel that with a new Congress controlled government now in power, the commission's results may be undermined. Many conspiracies abound, and many contain specific details that are damaging to the Congress Party and Indian Prime Minister Jawaharlal Nehru.

Three researchers who helped find the declassified documents in the military archives of Paddolsk, Russia, Purabi Ray, Hari Vasudevan and Shobanlal Dutta Gupta, have also reported threats from unidentified persons upon their lives, if they did not stop their research. Many files and documents by the Union Home Ministry have been deemed a risk to national security and under Sections 123 and 124 of the Evidence Act and Article 74(2) of the Constitution of India, have not been disclosed to the commission.

The Mukherjee Commission is also not the first commission created to ascertain the death of Netaji Subhas Chandra Bose. The two previous commissions were the Shah

Newaz Commission (appointed by Jawaharlal Nehru) and The Khosla Commission respectively. The Khosla Commission, created by the government of Indira Gandhi (daughter of Jawaharlal Nehru), reported that all documents relating to Prime Minister Nehru and the reports of Netaji Subhas Chandra Bose were either missing or destroyed.

[edit] Govt of India rejects Mukherjee Commission report

The Mukherjee Commission report was tabled in the Parliament of India on May 17, 2006. The report said that Netaji did not die in the alleged air crash of 1945 and the ashes at the Renkoji temple are not his ashes. The report also did not comment on Netaji's alleged stay in Russia after 1945 and called for further investigation into the matter. However, the report said that Netaji could be presumed to be dead today.

The Govt of India has rejected the findings of the Commission, saying that it did not agree with the findings.

[edit] Mukherjee Commission report submitted

The Death of Netaji remains a mystery. No one cooperated in the investigation and consequently the JMC of enquiry was forced to submit its unfinished work to the home minister Shivraj Patil. The main reason for this is the non-cooperation shown by the home ministry. The dissatisfaction caused resulted in Justice Mukherjee sending the report through his secretary rather than submit it in person.

During the whole tenure of the investigation, only one country, Taiwan has shown any real cooperation. Even the Govt of India refused to share some important intelligence files under the pretext of them being sensitive. The GoI will be tabling this report along with the ATR to the parliament. At the moment the home minister has passed on this 500 page report to the CS division of the ministry for scrutiny.

Subrata Bose, who was present in all the international trips made by the JMC has said that apart from Taiwan, no other country has shown any cooperation. On the basis of the information available from Taiwan it is now confirmed that no air-crash took place on 18th August 1945 which could have killed Netaji as previously propagated.

The commission had tried to uncover facts from trips to Japan, Taiwan and Britain. The UPA govt has permitted the commission to visit Russia. Bose said that Russia too did not cooperate in this investigation. Officials in Russia had said that files were present in the former KGB archives but the commission was not even allowed to visit the archives. The hostile posture of the British, Japanese and Indian governments is intriguing and seems to strongly point to an international conspiracy. In any case it is clear that Netaji Bose was seen in Russia in 1946. Lately American state department has sent information to the commission which corroborate the fact that no aircrash

took place in Taiwan. The request for intelligence papers from the Govt. of India elicited the official response that they cannot be opened as they are of a highly sensitive nature that may jeopardise international relations between India and some of its friend nations.

The JMC commission was formed by the former NDA Government to investigate the mystery surrounding Netaji's death at the end of world war II. The only kindness shown by the UPA Govt was to extend the commission's tenure by 6 months - from May 2005 to 14th November 2005. But the commission has now submitted its report to the Govt before the end date.

[edit] External links

<http://www.rashtriyasahara.com/20051109/National.htm#2005110984>

INdians for Action - No. 1 site on the Netaji disappearance case

<http://www.indiansforaction.com>

Mission Netaji - Committed to find the truth behind the disappearance of Netaji

<http://www.missionnetaji.org>

Post Mukherjee Commission News Updates http://www.geocities.com/ang_18_1945/

May 17th, 2006. Mukherjee Commission report made public by the Indian Government along with the Government's criticism.

নেতাজি: প্রধানমন্ত্রীর দপ্তরকে ২৯টি গোপন ফাইলের তালিকা দিতে নির্দেশ তথ্য কমিশনের

নিজস্ব প্রতিনিধি, নয়াদিল্লি, ১৯ ফেব্রুয়ারি: নেতাজি সংক্রান্ত ২৯টি গোপন ফাইলের তালিকা ও শিরোনাম (টাইটেল) আগামী ১০ দিনের মধ্যে জনসমক্ষে প্রকাশ করার জন্য প্রধানমন্ত্রীর দপ্তরকে (পি এম ও) নির্দেশ দিলেন কেন্দ্রীয় মুখ্য তথ্য কমিশনার অরুণা জাহাঙ্গীর হাবিবুল্লা। সুপ্রিমকোর্টের আদেশানুযায়ী রহস্য নিয়ে তথ্যসমৃদ্ধ এই ২৯টি ফাইল এখনও 'টপ সিক্রেট', 'কনফিডেন্সিয়াল' এবং 'সিক্রেট' মার্কি হয়ে প্রধানমন্ত্রীর দপ্তরে দাখিল রয়েছে। সোমবার রাতে কেন্দ্রীয় মুখ্য তথ্য কমিশনার হাবিবুল্লা এক লিখিত আদেশে বলে দিয়েছেন, পি এম ও'র ডিরেক্টর অমিত আগরওয়ালকে এই ২৯টি ফাইলের তালিকা রাজধানীর 'নিশান নেতাজি' সংগ্রহস্থলের কার্গি অগুজ ধরের হাতে তুলে দিতে হবে। কারণ অনুজ ধরই 'মিশন নেতাজি' সংগঠনের তরফে গোপন ফাইলগুলির প্রকাশ চেয়ে তথ্য জানার অধিকার আইন মোতাবেক কমিশনে পিটিশন দায়ের করেছিলেন।



তদন ৪টি ফাইল জনসমক্ষে প্রকাশ হলে একটি নির্দেশি রাষ্ট্রের সঙ্গে ভারতের সম্পর্ক হানি হবে বলে মনমোহন সিংয়ের দপ্তর আগেই কেন্দ্রীয় তথ্য কমিশনকে জানিয়েছিল। কেন্দ্রীয় মুখ্য তথ্য কমিশনার অরুণা জাহাঙ্গীর হাবিবুল্লা পি এম ও'র সেই বক্তব্য মেনে নিয়েছেন এবং জারি করা আদেশটিতে বলেছেন, সংশ্লিষ্ট ৪টি ফাইল সম্পর্কে আমরা প্রধানমন্ত্রীর দপ্তরের যুক্তি মেনে নিচ্ছি এবং ওই ফাইলগুলি প্রকাশ করার ব্যাপারে আমরা কিছু বলছি না। ফলে রহস্য থেকেই যাচ্ছে বলে ওয়াকিবহাল মহলের মত। উল্লেখ করা যায়, গত ২৭ জানুয়ারি তথ্য কমিশনের শুনানি শেষ

প্রধানমন্ত্রীর দপ্তরকে নির্দেশ দিয়েছিল যে, ওই দপ্তরে রাখা নেতাজির অন্তর্গত সংক্রান্ত গোপন ফাইলগুলির তালিকা ও বিবরণ মুখ বন্ধ খামে ১৫ ফেব্রুয়ারি কমিশনের সামনে পেশ করতে হবে। সেইমতো গত শুক্রবার বিকালে নির্দিষ্ট সময়ে পি এম ও'র পদস্থ আমলা বেফের সামনে তা পেশ করেন। হাবিবুল্লা ও বেফের বাকি কমিশনাররা গত শনি ও রবিবার সেগুলি বিস্তারিত খতিয়ে দেখেন। কমিশন সূত্রে জানা গেল, পি এম ও'র ওই মুখ বন্ধ খামে মোট ৩৫ টি ফাইলের তালিকা ও বিবরণ দিয়েছে। যার মধ্যে ২টি ফাইল ইতিমধ্যেই 'ডিক্লাসিফাইড' অর্থাৎ জনসমক্ষে প্রকাশ করা হয়ে গিয়েছে এবং ৩৩টি ফাইল এখনও গোপন রয়েছে বলে পি এম ও কমিশনকে জানিয়েছে।

পি এম ও থেকে পেশ করা খামটির বিষয়বস্তু ভালো করে খতিয়ে দেখার পরে সোমবার রাতে জারি করা আদেশে মুখ্য তথ্য কমিশনার হাবিবুল্লা একথা জানিয়ে বলেছেন, 'প্রধানমন্ত্রীর দপ্তরে রাখা নেতাজি সংক্রান্ত ৩৩টি গোপন ফাইলের মধ্যে ৭টিতে 'টপ সিক্রেট', ৩টিতে 'কনফিডেন্সিয়াল' লেখা রয়েছে। বাকি ২৩টি ফাইল হল 'সিক্রেট' মার্কি। এই ৩৩টি গোপন ফাইলের মধ্যে আবার ৪টি হল বিদেশি রাষ্ট্র সংক্রান্ত। তাই সেগুলিকে নাম দিয়ে বাকি ২৯টি ফাইলের তালিকা ও টাইটেলের বিবরণ আজ থেকে ১০ দিনের মধ্যে প্রধানমন্ত্রীর দপ্তরের ডিরেক্টর অমিত আগরওয়ালকে তুলে দিতে হবে পিটিশনার অনুজ ধরের হাতে। এছাড়া ইতিমধ্যেই প্রকাশিত ২টি ফাইলের তালিকা এবং টাইটেলও পি এম ও'কে দিতে হবে।'

২৭ মার্চ ২০০৮ বর্তমান [৭]

নেতাজির স্ত্রী-কন্যার চিঠি সহ ২৯টি গোপন ফাইলের তালিকা প্রকাশ কেন্দ্রের

নয়াদিল্লি, ২৬ মার্চ (পি টি আই): তথ্য জ্ঞানার অধিকার আইনের জাঁতাকলে পড়ে শেষ পর্যন্ত নেতাজির অন্তর্ধান সংক্রান্ত ২৯টি গোপন নথির তালিকা প্রকাশ করতে বাধ্য হল কেন্দ্রীয় সরকার। প্রধানমন্ত্রীর দপ্তরে কড়া নিরাপত্তায় ঘেরা একটি ভল্টে রাখা এই নথিগুলির মধ্যে নেতাজি সুভাষচন্দ্র বসুর স্ত্রী এমিলি শেঙ্কেল এবং মেয়ে অনিতা বসু পাকিস্তানের সরকারকে লেখা চিঠিও রয়েছে বলে জানা গিয়েছে।

দিল্লির সংস্থা 'মিশন নেতাজি' আগেই প্রধানমন্ত্রীর দপ্তরের কাছে এই অপ্রকাশিত নথি সম্পর্কে জানতে চেয়েছিল। কিন্তু গোপন নথিগুলির

তালিকা কেন্দ্রীয় সরকার প্রকাশ করেনি। জানানো হয়েছিল, এর সঙ্গে দেশের সার্বভৌমত্ব এবং অন্য দেশের সঙ্গে ভারতের সম্পর্কের বিষয় জড়িয়ে রয়েছে।

এরপরই বিষয়টি কেন্দ্রীয় তথ্য কমিশনের (সি আই সি) কাছে তুলে ধরা হয়। গত ৮ ফেব্রুয়ারি কমিশন প্রধানমন্ত্রীর দপ্তরকে অপ্রকাশিত ৩৩টি নথির মধ্যে ২৯টি নথির তালিকা



শিরোনাম সহ প্রকাশের নির্দেশ দেয়া নেতাজির স্ত্রী-কন্যার চিঠি ছাড়াও প্রধানমন্ত্রীর দপ্তরে এই সংক্রান্ত অন্য যেসব নথি-প্রমাণ রাখা আছে, সেগুলির মধ্যে রয়েছে নেতাজির তথাকথিত চিতাভস্ম সংক্রান্ত কাগজপত্রও। এমনকী

নেতাজি যে ইন্ডিয়ান ন্যাশনাল আর্মি (আই এন এ) গঠন করেছিলেন, তার কোষাগার সংক্রান্ত নথি এবং তাকে 'মরণোত্তর' ভারত রত্ন দেওয়ার

বিষয়ের 'পলিসি পেপার'-এর উল্লেখও প্রকাশিত তালিকার মধ্যে রয়েছে। তবে বাকি চারটি নথির তালিকা মুখ্য তথ্য কমিশনার ওয়াজাত হাবিবুল্লাহ নিজেই প্রকাশ করতে নিষেধ করেছেন। তিনি জানিয়েছেন, এই চারটি নথির সঙ্গেই অন্য রাষ্ট্রের সংযোগ রয়েছে। কাজেই এগুলির কথা প্রকাশ করা যাবে না। কমিশনের জারি করা নির্দেশনামায় নেতাজি সংক্রান্ত ওই ২৯টি গোপন নথির মধ্যে সাতটিকে 'টপ সিক্রেট', তিনটিকে 'কনফিডেনশিয়াল' এবং বাকিগুলিকে 'সিক্রেট' বলে অভিহিত করা হয়েছে।

আনন্দবাজার পত্রিকা কলকাতা বৃহস্পতিবার ২৭ মার্চ ২০০৮

আনন্দবাজার পত্রিকা

নেতাজিকে নিয়ে গোপন নথি প্রকাশ

নয়াদিল্লি, ২৬ মার্চ: 'তথ্য জ্ঞানার অধিকার' আইনের দৌলতে নেতাজি সম্পর্কিত অত্যন্ত গুরুত্বপূর্ণ কিছু নথি প্রকাশ করতে বাধ্য হল সরকার। এত দিন এগুলি প্রধানমন্ত্রীর দফতরে চূড়ান্ত নিরাপত্তার ঘেরাটোপে রাখা ছিল। এর মধ্যে তৎকালীন সরকারকে লেখা নেতাজির স্ত্রী ও কন্যার কয়েকটি চিঠিও আছে। আছে তাঁর অন্তর্ধান, 'চিতা ভস্ম' ও 'মরণোত্তর' ভারত রত্ন সম্মান নিয়ে তথ্যসম্বলিত কিছু নথিও। তবে, বৈদেশিক সম্পর্কে বিরূপ প্রভাব পড়তে পারে, এই যুক্তিতে প্রধানমন্ত্রীর দফতর আগে এগুলি প্রকাশ করতে অস্বীকার করেছিল।— পি টি আই

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of AdvocateSerial
No.

Date

Office notes, reports, Orders or proceedings with signature

31 15.02.08

2006
W.P. 27541 (W) of 2007

Mr. Subhas Chandra Basu.

....Petitioner.

Mr. Tarun Kumar Ghosh.

...For U.O.I.

The prayer of the learned counsel appearing on behalf of Union of India to extend the time for filing the affidavit-in-opposition is accepted, in the interest of justice. We are, however, of the opinion that this is a fit case for imposing costs on Union of India. We direct that the affidavit-in-opposition may now be filed within a period of two weeks from date, on payment of 100 Gms. as costs. Reply thereto, if any, may be filed one week thereafter.

Let the matter appear in the list three weeks hence.

Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties on usual undertaking.

Self (SURINDER SINGH NIJJAR, C.J.)

Self (PINAKI CHANDRA GHOSE, J.)

20-2-08
Asst. Registrar
(Court)
Allahabad High Court
Allahabad

From : 1. SRI SUBHAS CHANDRA BASU
Residing at- 86, Sadar Boxi Lane,
P.O. Howrah, P.S. Howrah,
Dist. Howrah, Pin - 711101.

2. SRI PANKOJ HALDER
Residing at- Village - Mathurapur,
P.O. Mathurapur, P.S. Mathurapur,
Dist. South 24-Parganas.

Date : 11.03.2008

To

1. The Hon'ble Minister for Home Affairs,
Government of India,
New Delhi - 110001.
2. The Hon'ble Minister of Foreign Affairs,
Government of India,
New Delhi.

Sir(s),

Sub : REAPPOINTMENT OF MUKHERJEE COMMISSION FOR
COMPLETION OF INQUIRY INTO DISAPPEANCE
AND/OR ALLEGED DEATH OF NETAJI SUBHAS
CHANDRA BOSE IN AUGUST, 1945.

With due reverence and submission, we would like to place before you the following facts for immediate consideration and necessary action :-

1. That with regard to mysterious disappearance of Netaji Subhas Chandra Bose first a three - member Inquiry committee, vide its Notification No.F-30(26) FEA/55 dated April 5, 1956, was appointed by the Government of India. The majority report which held that Netaji died in the aforesaid plane crash, was accepted by the Government of India.
2. That the said majority view of that committee, however, did not satisfy the public in general. There was further demand by the members of the Parliament to raise a voice for further enquiry into the matter. Then the Govt. of India vide Notification No. 25/14/70-Poll. 11.07.1970 constituted an Enquiry Commission headed by Shri G.D . Gholia, Retired Chief Justice of Punjab, High Court. The said Commission came to the conclusion that Netaji had succumbed to his injury sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo Japan. The findings of the Khosla Commission did not end the controversy surrounding Netaji's Death.
3. That thereafter a Writ Petition being W.P. No.281 of 1998 was filed in the Hon'ble High Court, Calcutta to launch a vigorous inquiry into the alleged disappearance/death of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of

Subhash Chandra Bose
Pankoj Halder

Inquiry and by an order dated April 30, 1998 the Hon'ble Division Bench, High Court, Calcutta, directed the Union of India for conducting an in-depth enquiry by appointing a Commission of Inquiry for the purpose of giving an end to the controversy.

4. That thereafter by a unanimous resolution adopted by the West Bengal Legislative Assembly on 24.12.1998 demanded that Government of India should make necessary arrangement for availability of records and documents in an outside India so that the scholars and people could have access to them and also constitute a fresh Inquiry Commission to remove the controversy and/or whereabouts of Netaji Subhas Chandra Bose.
5. That in the context, the Government of India appointed the one-man, Commissioner known as Mukherjee Commission by its Notification No.SO 339 (E) dated 14.05.1999. The said Commission shall inquire into the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is died, whether he died in the Plane Crash, as alleged;
- (c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- (d) Whether he has died in any other manner at any other place and, if so, when and how;
- (e) If he is alive, in respect of his whereabouts;

The Commission shall also examine the manner in which the exercise of security of publication touching upon the question of death of Netaji can be undertaken by the Central Government in the circumstances.

6. That the Mukherjee Commission had examined 131 Nos. of Witnesses and perused 308 Nos. of Exhibits, and visited various probable places of death such as (i) Death in Red Fort, (ii) Death in Plane Crash, (iii) Death in Dehradun, (iv) Death in Sheopukalan and (v) Death in Faizabad, and also visited different foreign countries and ultimately came to the following conclusion/findings on 07.11.2005 :-

- (a) Netaji Subhas Chandra Bose is dead.
- (b) He did not die in Plane Crash as alleged.
- (c) The ashes in the Japanese Temple are not Netaji.
- (d) In absence of any clinching evidence a positive answer can not be given and,
- (e) Answer already given in (a) above;

Subhash Chandra Bose
Pan Kestraler

In the matter of publication touching upon the death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the Plane Crash, as alleged. The said report was submitted before the Government of India on 08.11.2005.

7. That the Mukherjee Commission report was tabled in Parliament on 17.05.2006 and Government of India rejected the findings of the Commission without assigning any reason for rejection. The commission lasts for about 6 years and 7 months from 14.05.1999 to 08.11.2005. A huge money from the public exchequer was spent for this purpose but Mukherjee Commissioner failed to make any finding when, where and how Netaji Subhas Chandra Bose died. Furthermore, the Commission made a presumption as to death of Netaji due to expiry of more than 108 years 9 months 9 days on 07.11.2005 (date of submission of report) since the date of birth of Netaji Subhas Chandra Bose was on 23.01.1897.
8. That the Mukherjee Commission suggested that as to publication touching the death of Netaji Subhas Chandra Bose, the Government of India can proceed on the basis that he is dead but not in the Plane crash, as alleged. The said controversy never ended rather after rejection of findings of Mukherjee Commission on 17.05.2006, the controversy has further ignited and encouraged. Though the object of the Commission was to make an end and to light on the points how, where and when Netaji Subhas Chandra Bose died.
9. That the Mukherjee Commission did not make any comment on Netaji alleged stay in Russia in 1945 and called for further investigation into the matter. As citizens of India we have every right to know about the date and place and reason of death of our national leader of the country.

Under the above facts and circumstances, you are requested to reappoint Mukherjee Commission to complete the Inquiry as per terms of reference into the disappearance and/or alleged death of Netaji Subhas Chandra Bose in August, 1945 and/or alleged stay in Soviet Russia.

Yours faithfully,

Subhash Chandra Basu
(Subhash Chandra Basu)

Pankaj Halder

(Pankaj Halder)

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT
JURISDICTION
APPELLATE SIDE

W.P. NO. 8215 (W) OF 2008

IN THE MATTER OF :

An application under Article 226 of
the Constitution of India;

And

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

UNION OF INDIA & ORS.

.... RESPONDENTS

P E T I T I O N

ON-RECORD

SUBHASH CHANDRA BASU

Petitioner-in-Persons

Bar Association Room No.12

High Court, Calcutta

SPEED POST

No. 592/Home/08-III /1803/431
 Ministry of Law and Justice
 11, Strand Road, Kolkata-1.

Date :- 2.7.08

✓ To
 Sri S.K. Malhotra
 Dy. Secretary
 Ministry of Home Affairs
 IS Divn^{CDN} Section
 9th floor, Loknayak Bhavan
 Khan Market
 N. Delhi.

Sub: -WP No. 8215(W) of 08
 Sri Subhash Chandra Basu & Anr.
 -Vs-
 UOI & Ors.

Sir,

Enclosed please find herewith a copy
 of letter dated 27.6.08 received from
 our panel counsel Sri T.K. Ghosh, Advocate
 which speaks for itself.

You are requested to depute one conver-
 sant officer alongwith necessary instructions to
 meet our panel counsel to do the needful.

Encl: As above.

Yours faithfully,

US(L).

(G.S. Makker)
 Jr. CGA

Next hearing on 11/7/08.

P1. Inform them that same time
 may be sought as other Detents/Respondents
 need to be consulted for necessary reply.

9/7/08

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasoh@yahoo.co.uk

Visiting Hours : 6 p.m. to 9 p.m.

Chamber : 2350-9128 & 1351 2988

Mobile : 9433306000

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street

1st floor, Kolkata - 700 009

168

By Hand
Through Special Messenger

The 27th June, 2008

To

The Additional Government Counsel,

Ministry of Law & Justice.

Department of Legal Affairs, Branch Secretariat.

11, Strand Road, Kolkata - 700 001.



Your Ref. File No. 592/Home/08/III dated 22.06.2008

Re : W. P. No: 8215 (W) of 2008

Sri Subhash Chandra Basu & Anr.

-Vs-

Union of India & Ors

(The matter is pending in the Hon'ble High Court, Calcutta)

Dear Sir,

This is to inform you that the matter was listed in the daily supplementary list dated 20.06.2008 of Their Lordships The Hon'ble Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Pinaki Chandra Ghose under the head "MOTION (PIL)" and placed for hearing before Their Lordships on 20.06.2008 itself.

At the time of hearing, I appeared on your behalf. The matter was heard and after hearing the Ld. Advocates for the respective parties Their Lordships were pleased to admit the writ petition directing to hear the matter with W. P. No: 2003 of 2006 (original side), Rudra Jyoti Bhattacharjee & Ors. -Vs- Union of India & Ors.

In this context, it is pertinent to mention here that the writ petition being W. P. No: 2003 of 2006 directed to be placed for hearing on 11.07.2008

As such, I think affidavit-in-opposition is necessary to be filed in W. P. No: 8215 (W) of 2008 on or before 11.07.2008 for protecting your interest

This is for your record and doing the needful.

~~Please do the needful~~
Thanking You.

Yours faithfully,
Tarun Kumar Ghosh
(TARUN KUMAR GHOSH)

Advocate.
27.06.2008

Dr. M. Bose
21/7/08

RET
Disse
19/7/08

1169

No.12014 / 6/ 08-Cdn.
Government of India
Ministry of Home Affairs
IS Division : Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi

Dated , the 9th July, 2008

To

Shri Tarun Kumar Ghosh,
Advocate,
High Court, Calcutta,
10 - N, Dr. Kartick Bose Street,
1st Floor, Kolkata - 700 009.

10 JUL 2008

Subject: WP No. 8215 (W) of 08 Shri Subhash Chandra Basu &
Anr. Vs UOI & Ors.

Sir,

Kindly refer to your letter dated 27th June, 2008 addressed to the Additional Government Counsel, Ministry of Law and Justice, Kolkata and Ministry of Law and Justice Letter No. 592 / Home / 08-III/1803/431 dated 2nd July, 2008 on the above mentioned subject . It is requested that more time say about one month or more may be sought beyond 11th July 2008 from the Hon'ble Court for filing the affidavit as the writ petition require consultation with other Ministries such as Ministry of External Affairs, Ministry of Parliamentary Affairs and PMO.



Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Govt. of India
Tel:24610466

Ole

Copy to : Shri G S Makkar, Jr. CGA, Ministry of Law and Justice, 11 Strand Road,
Kolkata - 1.

Sh. T.K. Gohash could not be contacted. A message was also left with his office even then he did not contact.

18/4

May kindly see.

Anuraj
18/7/08

~~DS (Legal)~~

Try today eve.

Try again again on 18/7/08 as also on 21/7/08 but no response is there.

~~DS (Legal)~~

Anuraj
21/7/08

RDI
Please
all
6/8/08

1371
MOST IMMEDIATE / BY FAX

No.12014 / 6/ 08-Cdn.
Government of India
Ministry of Home Affairs
IS Division : Cdn Section

06 AUG 2008

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi

Dated , the 5th Aug, 2008

To

By Speed Post

Shri Tarun Kumar Ghosh,
Advocate,
High Court, Calcutta,
10 – N, Dr. Kartick Bose Street,
1st Floor, Kolkata – 700 009.

Subject: WP No. 8215 (W) of 08 Shri Subhash Chandra
Basu & Anr. Vs UOI & Ors.

Sir,

Kindly refer to our letter of even number dated 9th / 10th July, 2008
on the subject mentioned above. It is requested that the next date of
hearing in the case may kindly be intimated to us immediately.

Yours faithfully,

Amar Chand

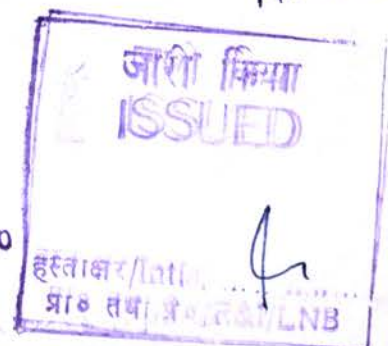
(Amar Chand)

Under Secretary to the Govt. of India
Tel:24610466

Copy to : Shri G S Makkar, Jr. CGA, Ministry of Law and Justice, 11 Strand
Road, Kolkata – 1.

Amar Chand

06 AUG 2008



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132

SENDING CONFIRMATION

DATE : JAN-5-2000 WED 16:54

NAME :

TEL :

PHONE : 03322485215

PAGES : 1

START TIME : JAN-05 16:53

ELAPSED TIME : 00'26"

MODE : ECM

RESULTS : OK

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125
155
MOST IMMEDIATE / BY FAX

No.12014 / 6/ 08-Cdn.
Government of India
Ministry of Home Affairs
IS Division : Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi

Dated , the 12th Aug, 2008

To

Shri Tarun Kumar Ghosh,
Advocate,
High Court, Calcutta,
10 – N, Dr. Kartick Bose Street,
1st Floor, Kolkata – 700 009.

Through
Jr. CGA,
M/o L & J
Kolkata

Subject: WP No. 8215 (W) of 08 Shri Subhash Chandra
Basu & Anr. Vs UOI & Ors.

Sir,

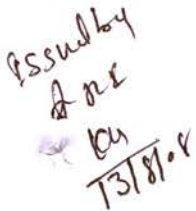
Kindly refer to our letter of even number dated 9th / 10th July, 2008
and 5th Aug, 2008 on the subject mentioned above. It is requested that the
next date of hearing in the case may kindly be intimated to us immediately.

Yours faithfully,



(Amar Chand)
Under Secretary to the Govt. of India
Tel:24610466

Copy to : Shri G S Makkar, Jr. CGA, Ministry of Law and Justice, 11 Strand
Road, Kolkata – 1.



By Speed post 176
Immediate 156
भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS
लोक नायक भवन, खान मार्केट
LOK NAYAK BHAWAN, KHAN MARKET
नई दिल्ली-110003
NEW DELHI-110003

Dated: the 13th August, 2008

13 AUG 2008

With kind regards,

(S.K. Malhotra)

-1.

जा 1 किया
ISSUED
13 AUG 2008

हस्ताक्षर
प्र. ०

884 LNB

122

MOST IMMEDIATE / BY FAX

**No.12014 / 6/ 08-Cdn.
Government of India
Ministry of Home Affairs
IS Division : Cdn Section**

**9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi**

Dated , the 12th Aug, 2008

To

**Shri Tarun Kumar Ghosh,
Advocate,
High Court, Calcutta,
10 – N, Dr. Kartick Bose Street,
1st Floor, Kolkata – 700 009.**

*Through
Jr. CGA,
M/o L & J
Kolkata*

**Subject: WP No. 8215 (W) of 08 Shri Subhash Chandra
Basu & Anr. Vs UOI & Ors.**

Sir,

Kindly refer to our letter of even number dated 9th / 10th July, 2008 and 5th Aug, 2008 on the subject mentioned above. It is requested that the next date of hearing in the case may kindly be intimated to us immediately.

Yours faithfully,



(Amar Chand)
Under Secretary to the Govt. of India
Tel:24610466

**Copy to : Shri G S Makkar, Jr. CGA, Ministry of Law and Justice, 11 Strand
Road, Kolkata – 1.**

By Speed Post 128
MOST IMMEDIATE/BY FAX 158

No.12014/6/08-Cdn.
Government of India
Ministry of Home Affairs
IS Division: Cdn. Section

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dt.4.9.08

To

Shri Tarun Kumar Ghosh,
Advocate,
High Court, Calcutta,
10-N, Dr. Kartick Bose Street,
1st Floor, Kolkata 700 009.

Subject: WP No.8215 (W) of 08 Shri Subhash Chandra Basu & Anr. Vs UOI
& Ors.

Sir,

Kindly refer to our letter of even number dated 9th/10th July,2008, 5th
Aug.2008 and 12th Aug.2008 on the subject mentioned above. It is requested that
the next date of hearing in the case may kindly be intimated to us immediately.

Yours faithfully,

Amar Ch

(AMAR CHAND)

UNDER SECRETARY TO THE GOVT. OF INDIA.

Tel:24610466

Copy to: Shri G.S. Makkar, Jr. CGA, Ministry of Law and Justice, 11 Strand
Road, Kolkata - 1

for no. 03323509128 (Terun G. Kashi)

033-22485215

शिवराज पाटील
SHIVRAJ V. PATIL
गृह मंत्री, भारत
HOME MINISTER, INDIA

May 15, 2006

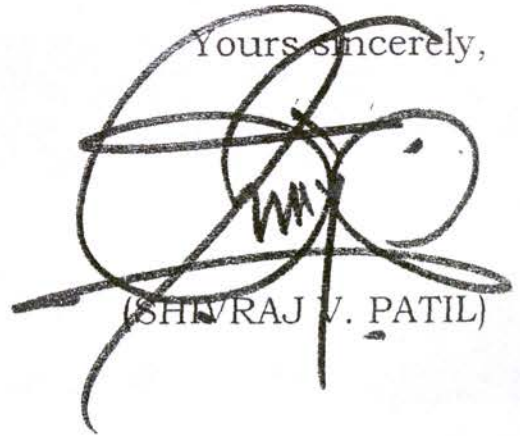
To,

The Hon'ble Chairman,
Rajya Sabha,
New Delhi.

Sir,

I give notice of my intention to lay on the Table of Rajya Sabha the Report of the Justice Mukherjee Commission of Inquiry into the alleged disappearance of Netaji Subhas Chandra Bose, along with the Action Taken Report and the Statement of reasons for delay in laying the Report, on 17th May, 2006.

Yours sincerely,



(SHIVRAJ V. PATIL)

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AUTHENTICATED

SHIVAJI V. PATIL
HOME MINISTER

**MEMORANDUM OF ACTION TAKEN ON THE REPORT
OF THE JUSTICE MUKHERJEE COMMISSION OF INQUIRY REGARDING
THE ALLEGED DISAPPEARANCE OF
NETAJI SUBHAS CHANDRA BOSE**

By Government of India Notification No. S.O. 339(E) dated 14th May, 1999, Shri M.K. Mukherjee, retired Judge of the Supreme Court of India, was appointed under the Commissions of Inquiry Act, 1952, to inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including –

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that -

- (a) Netaji did not die in the plane crash; and
- (b) the ashes in the Renkoji Temple were not of Netaji.

3. This Report is placed before the Houses as required under sub-section (4) of Section 3 of the Commissions of Inquiry Act, 1952.

OPINION

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Re. *Writ petitions pending before the Calcutta High Court regarding the disappearance of Netaji Subhas Chandra Bose.*

This reference has been made to me pursuant to a meeting held at the PMO on 01.09.2008, attended by the Law Secretary. My opinion has been sought as to the further course of action with respect to the 3 writ petitions pending adjudication before the Calcutta High Court regarding the Action Taken Report on the Justice Mukherjee Commission of Inquiry which was appointed to inquire into the alleged disappearance of Netaji Subhas Chandra Bose.

As far back as 1997, the Supreme Court in the case *Union of India vs. Bijan Ghosh*, while dealing with the different views on the disappearance of Netaji Subhas Chandra Bose observed, as follows:-

".....We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communiqué or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views....."

There are different view points on whether Netaji Subhas Chandra Bose was actually killed in the air crash or whether the air crash never actually took place. It is not unknown that on the same material, different people, including Judges of High Court and Supreme Court come to different conclusions. This case is no different. It should not be forgotten that Netaji is very sentimental issue in India, and mention of his name arouses strong emotions. Therefore, the matter has to be handled carefully without hurting the sentiments of people, including the writ petitioners.

The disappearance of Netaji Subhas Chandra Bose has engaged the attention of Government right from the very beginning. The Government of India has, so far, appointed 3 committees/commissions to inquire into the matter. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, which was appointed in the year 1956. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan), on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the

Committee submitted a dissenting report. The Government of India accepted the majority report.

The second was a one-man Commission under Justice G.D. Khosla which was appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo, are those of Netaji.

Subsequently, writ petition was filed before the Calcutta High Court and a Division Bench by its judgment dated 30.04.1998, directed the Union of India to re-inquire into the alleged disappearance of Netaji in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on 24.12.1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose.

Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, Retired Judge of the Supreme Court, on 14.05.1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose and subsequent developments connected therewith, including-

- a) whether Netaji Subhas Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the plane crash, as alleged;
- c) whether the ashes in the Japanese temple are ashes of Netaji;
- d) whether he has died in any other manner at any other place and, if so, when and how;
- e) if he is alive, in respect of his whereabouts.

The Justice Mukherjee Commission of Inquiry [hereinafter referred to as "JMCI"] submitted its report on 08.11.2005 with the following findings-

Terms of reference

- a) whether Netaji Subhas Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the plane crash, as alleged;

Conclusion of the Commission

- a) Netaji Subhas Chandra Bose is dead.
- b) He did not die in the plane crash, as alleged;

- | | |
|---|--|
| c) whether the ashes in the Japanese temple are ashes of Netaji; | c) The ashes in the Japanese temple are not of Netaji; |
| d) whether he has died in any other manner at any other place and, if so, when and how; | d) In the absence of any clinching evidence a positive answer cannot be given; |
| e) if he is alive, in respect of his whereabouts. | e) Answer already given in (a) above. |

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view- consequent upon its above findings- that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged."

It is the Government's case that the report of JMCI was thoroughly examined. It was found that the Commission's inquiry was inconclusive in many ways and it had not been able to provide definitive findings. The finding of the JMCI that Netaji did not die in the plane crash is based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses, including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkioji Temple.

The view of the Government, as indicated in the note sheet, appears to be that the findings of JMCI do not appear to conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report [for short "ATR"] on 17.05.2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of said ATR reads as follows:-

- "2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that-
- a) Netaji did not die in the plane crash; and

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164

- b) the ashes in the Renkoji Temple were not of Netaji.
3. This Report is placed before the Houses as required under sub-section (4) of Section 3 of the Commissions of Inquiry Act, 1952."

Having taken the aforesaid stand, the stand should be defended by the Government of India in the Calcutta High Court in the pending writ petitions. The Government should defend its stand that the earlier reports had been accepted by the Government and before considering the contrary stand. There should have been good reason or evidence to indicate that Netaji Subhas Chandra Bose did not die in the plane crash on 18th August, 1945. The Government should proceed on the basis that he died in the plane crash. The Government should point out that the findings in the two earlier reports are substantiated by oral evidence. Though Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhas Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect.

It should be pointed out that it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it may be prayed that the matter should be treated as closed.

However, since the Calcutta High Court has taken cognizance of the matter and has issued notice in the writ petition, the Government would have to defend its decision not to accept the JMCI. It would have to be pointed out to the High Court that the decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI [as mentioned in the Note Sheets and the affidavits already filed in the High Court]. It should be emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. [*T.T. Antony vs. State of Kerala*, (2001) 6 SCC 181].

Therefore, in my opinion, the Government was within its rights in not accepting the report of JMCI. The said finding is not a finding of a court of law which binds the parties to the dispute. The Government is not obliged to accept the report. The prayer in the writ petition that the ATR dated 17.05.2006 should be quashed essentially seeks to challenge the decision of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

Now, I may briefly deal with the contentions in the writ petition.

1. Insofar as Writ Petition No.8215 (W) of 2008 filed by Subhash Chandra Basu and others is concerned, the grievance of the Petitioners seems to focus on the failure to give reasons in the ATR for not agreeing with the findings of the JMCI. The answer is that reasons existed which are in the file [Menaka Gandhi's case] Therefore, the reasons, as available in the file on which the decision was taken, should be placed on record. There is an averment in paragraph 15 of the Writ Petition that there is 'recently' an order of Central Information Officer whereby some secret and top secret files have become available which were not made available to the Mukherjee Commission of Inquiry. The said order has not been annexed, but references to some newspaper articles have been made. This requires to be looked into. If there is no such order or any top secret file, the same should be brought on affidavit before the High Court. If there is such an order the matter may be looked into as to whether it requires reconsideration. The prayer in the said Writ Petition is to reappoint or continue the Mukherjee Commission of Inquiry, which should be opposed in as much as Mukherjee Commission took 6 years and 7 months and there is no fresh material or record which was not before the Mukherjee Commission which justifies the reappointment or reopening of the Mukherjee Commission of Inquiry.
2. I have briefly gone through the Writ Petition filed by Rudra Jyoti Bhattacharya being WP No.2003 of 2006 and I find that a detailed counter affidavit had already been filed in the said matter sometime in October, 2007 reflecting the stand of the Government. The said counter affidavit seems to be sufficient for the present purposes to deny the prayer in the Writ Petition which essentially seeks to challenge the Action Taken Report of the Government of India dated 17th May, 2006.
3. I have also briefly seen the Writ Petition No.27541(W) of 2006 filed by Shri Aseem Kumar Ganguli against the UOI and others. It appears that a detailed counter affidavit had been filed by the Government in consultation with Ministry of External Affairs and Netaji Subhas Research Bureau, Kolkata. The said Writ Petition seeks to restrain the Government of India from making any grant to Renkoji Temple, where the ashes of Netaji are supposed to have been kept. I find that a categorical statement has made in the counter affidavit filed by the Government [at para 15 page 166] that the Government of India does not spend any money to maintain the ashes kept

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in Renkoji Temple, Tokyo. I understand that this implies that the Government of India is not making any grant to said temple through any Ministry or in any manner whatsoever. This needs to be established before the Court.

Milon Banerji
[Milon K. Banerji]
Attorney General for India

New Delhi.
11th December, 2008

By Speed Post ¹⁸⁷ 8

Fax: 033-22311646

Phone: 22486515

Govt. of India
Ministry of Law and Justice
Deptt. of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor,
KOLKATA - 700 001.

592
F.No. ~~1234~~/Home/08-Lit.III/ 2964/818 Dated 25th November, 2008

To
Shri S.K. Malhotra,
Deputy Secretary (Legal),
Ministry of Home Affairs, Lok Nayak Bhavan,
Khan Market, NEW DELHI - 110 003.

Sub: W.P.No. 8215 (W) of 2008
Sri Subhash Chandra Basu & Anr. -vs- Union of India & Ors.

Sir,

Please note that in this Writ Petition prayer has been made by the Petitioners for an order commanding the Central Govt. authority to re-appoint or re-open Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or dis-appearance of Netaji Subhas Bose in 1945 in view of the recent order passed by the Central Information Officer directing the Prime Minister's Office to disclose 29 'Secret' and 'top Secret' documents as reported in "Bartaman" and "Ananda Bazar Patrika" Newspapers dated 20.2.2008 and 27.3.08.

Please note that Shri R.N. Das, Special Counsel and Shri Tarun Kumar Ghosh, Advocate, have been engaged to appear on your behalf. The matter was discussed with Shri R.N. Das, Special Counsel yesterday. Then Shri R.N. Das, Spl. Counsel is of the opinion that the Deptt. should furnish parawise comments and brief history of the case immediately to him as the matter is very serious one so that the Affidavit in Opposition can be prepared without further loss of time. The matter may come up any day before the Division Bench presided over by the Hon'ble Chief Justice. Shri R.N. Das, Spl. Counsel also desires that a responsible officer from Ministry of Home, who is conversant with the matter, should come down to Kolkata immediately to brief him. You may kindly contact Shri R.N. Das, Special Counsel (Mobile No. 9830268681) and discuss the matter with him.

Yours faithfully,

6/3 25/11/08
(S.Bhattacharyya)

Additional Govt. Advocate/Incharge

7953/DS(2)/1/08
21/12/08
7953/10

①
T/12
W/12
u
21/12
80 (Sg. Chy)

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Copy to:

Shri Tarun Kumar Ghosh, Advocate, High Court, Kolkata.

- He is requested to get in touch with Shri R.N. Das, Special Counsel.

(S.Bhattacharyya)

Additional Govt. Advocate/Incharge

By Speed Post

189
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Fax:033-22311646

Phone: 22486515

Govt. of India
Ministry of Law and Justice
Deptt. of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor,
KOLKATA - 700 001.

F.No.1204/Home/06-Lit.III/

Dated 25th November, 2008

To

Shri S.K. Malhotra,
Deputy Secretary (Legal),
Ministry of Home Affairs, Lok Nayak Bhavan,
Khan Market, NEW DELHI - 110 003.

Sub: W.P.No. 8215 (W) of 2008

Sri Subhash Chandra Basu & Anr. -vs- Union of India & Ors.

Sir,

Please note that in this Writ Petition prayer has been made by the Petitioners for an order commanding the Central Govt. authority to re-appoint or re-open Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or dis-appearance of Netaji Subhas Bose in 1945 in view of the recent order passed by the Central Information Officer directing the Prime Minister's Office to disclose 29 'Secret' and 'top Secret' documents as reported in "Bartaman" and "Ananda Bazar Patrika" Newspapers dated 20.2.2008 and 27.3.08.

Please note that Shri R.N. Das, Special Counsel and Shri Tarun Kumar Ghosh, Advocate, have been engaged to appear on your behalf. The matter was discussed with Shri R.N.Das, Special Counsel yesterday. Then Shri R.N. Das, Spl. Counsel is of the opinion that the Deptt. should furnish parawise comments and brief history of the case immediately to him as the matter is very serious one so that the Affidavit in Opposition can be prepared without further loss of time. The matter may come up any day before the Division Bench presided over by the Hon'ble Chief Justice. Shri R.N. Das, Spl. Counsel also desires that a responsible officer from Ministry of Home, who is conversant with the matter, should come down to Kolkata immediately to brief him. You may kindly contact Shri R.N. Das, Special Counsel (Mobile No. 9830268681) and discuss the matter with him.

Yours faithfully,

6/3 25/11/08
(S.Bhattacharyya)

Additional Govt. Advocate/Incharge

Please put up

26/11/08

So (cdy)

26/11/08

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Copy to:

Shri Tarun Kumar Ghosh, Advocate, High Court, Kolkata.

- He is requested to get in touch with Shri R.N. Das, Special Counsel.

(S.Bhattacharyya)

Additional Govt. Advocate/Incharge

क्रम संख्या Serial No.	प्राप्त हुए कागज की संख्या और तारीख Number and date of document received		किससे प्राप्त हुआ From whom received	संक्षिप्त विषय Brief subject	किस सहायक के नाम चिह्नित किया गया Assistant to whom marked	मिसिल संख्या File No.	कैफियत Remark
	संख्या Number	तारीख Date					
70	29/29/9/07	TS dt 24/7	DS (Cabinet Secy)		Publication of Secret TB document on indianpeter.com website		Dir (IS-IT) MHA, NR vide P.B
71	5/43020/1/08	RTI	26/8/08 RTI Section dt 4/8/08		Application under RTI from Sh. Syed Ahmed		
12	1) File no. 12014/6/08	Coln.	18/9/08		i) W.P.No. 8215(W) of 08 filed by Sh. Subhash Chandra Basu &		M/Att Advocate (H) Section Sh. S.K. Datta Addl. Govt. Counsel, D/o Legal Affairs M/o Law & Justice, Shastri Bhawan N. Delhi issued vide P.B/4.
	2) File no. 12014/7/07	Coln.			ii) W.P.No. 2003 of 2006 - Rudra Tyoti Bhattacharyya vs. UOI		
	3) File no. 12014/12/07	Coln. (Note part - Correspondence part)			W.P. no. 27541 of 2006 - Ashim kr. Ganguly		

1) WP 2003/2006 Rindhydd.
Report of JMCI

2) WP 27541/ Ashim K. Sarraf
Filed affidavit → Sending one reply

3) WP 8215/2008 → Subhash C Basu
order to delete
Not received, any reply for us.

RN Das

24617/96

Smt S. Bhattacharya, Addl. Govt Adv & i/c
22 311646 FAX
22 486515 Phone

R.N. Das.

09830268681

Phone Call received for Smt
Bhattacharya about 2 cases
Pl. speak on 25/11

UG(L)

Additional sent to
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12014/5/07

Rudra Jyoti

Ashim Kumar Branjaly

12014/12/07

Subhash Chandra Basu

12014/6/08

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No.12014/12/07-Cdn.
Government of India
Ministry of Home Affairs
IS Division/Cdn. Section

9th Floor, Lok Nayak Bhavan,
Khan Market ,New Delhi-3.
Dated: 27th November, 2008

OFFICE MEMORANDUM

Subject : Writ Petitions filed in the High Court of Kolkata regarding Netaji Subhas Chandra Bose

The undersigned is directed to state that as per decision taken in the meeting held on 1.9.2008 taken by Secretary to PM on the above mentioned subject, brief note alongwith the relevant files i.e. (i) WP No. 2003 of 2006 - Rudra Jyoti Bhattacharya Vs UOI on Netaji Subhas Chandra Bose. [F.No. I/12014 / 5 / 2007 – Cdn (ii) WP No. 27541 (W) of 2006 filed by Sri Ashim Ganguly & Anr Vs UOI and Others. [F.No. 12014 / 12 / 2007 – Cdn and (iii) WP No. 8215 (W) / 2008 filed by the Subhash Chandra Basu and Others. F.No. 12014 / 6 / 2008 – Cdn were sent to Ministry of Law on 18th September, 2008 [by name to Shri S K Dullo, Addl Govt. Counsel] to suggest the course of action to be taken by MHA for filling affidavit on behalf of MHA, Office of the Prime Minister, Ministry of External Affairs, Ministry of Parliamentary Affairs and Netaji Research Bureau as also to obtain the advice of the Attorney General of India in the case and for securing the services of a senior most Counsel for representing the Government in the case. The response of the Ministry of Law is still awaited.

2. Deptt of Legal Affairs, Branch Sectt. Kolkata vide letter No. 1204/Home/06-Lit.III dated 25th November, 2008 (copy enclosed) has informed that W.P. No. 8215(W) of 2008 – Shri Subhash Chandra Basu & Anr vs Union of India may come up any day before the Division Bench presided over by the Hon'ble Chief Justice. Therefore, Department should furnish parawise comments and brief history of the case immediately to Shri R.N. Das, Spl Council as the matter is very serious one so that the Affidavit in Opposition can be prepared without further loss of time. Further, a responsible officer from MHA who is conversant with the matter should come down to Kalkata immediately to brief Spl Counsel.

3. In view of the position explained above, Ministry of Law and Justice is requested to expedite their advise in the matter, immediately.

L
ms12.

(S K Malhotra)
Deputy Secretary to the Govt. of India
Tele : 2469 71 24

To,
Shri S K Dullo,
Addl Govt. Counsel,
Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi.

PB 24
08
issued
(B. K. D. L.)
27/11/08

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No.12014/12/07-Cdn.
Government of India
Ministry of Home Affairs
IS Division/Cdn. Section

9th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-3.
Dated: 2nd Dec, 2008

OFFICE MEMORANDUM

Subject : Writ Petitions filed in the High Court of Kolkata regarding Netaji Subhas Chandra Bose

The undersigned is directed to refer to this Ministry's O.M of even number dard 27th Nov, 2008 on the above mentioned subject and to request that the advise of Ministry of Law and Justice may kindly be expedited so that further action in the matter could be taken accordingly. Needless to act, the Branch Sectt., Kolkata Department of Legal Affairs is pressing hard for furnishing parawise comments and brief history of the case without any further delay.

Amar Chand
(Amar Chand)

Under Secretary to the Govt. of India
Tele : 2461 0466

To,

Shri S K Dullo,
Addl Govt. Counsel,
Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi.

2 3384403

233 844 03

By Speed Post 136 8 176

Fax:033-22311646

Phone: 22486515

Govt. of India
Ministry of Law and Justice
Deptt. of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor,
KOLKATA - 700 001.

592
F.No. ~~1284~~/Home/06-Lit.III/ 2964/818 Dated 25th November, 2008
To
Shri S.K. Malhotra,
Deputy Secretary (Legal),
Ministry of Home Affairs, Lok Nayak Bhavan,
Khan Market, NEW DELHI - 110 003.

Sub: W.P.No. 8215 (W) of 2008
Sri Subhash Chandra Basu & Anr. -vs- Union of India & Ors.

Sir,

Please note that in this Writ Petition prayer has been made by the Petitioners for an order commanding the Central Govt. authority to re-appoint or re-open Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or dis-appearance of Netaji Subhas Bose in 1945 in view of the recent order passed by the Central Information Officer directing the Prime Minister's Office to disclose 29 'Secret' and 'top Secret' documents as reported in "Bartaman" and "Ananda Bazar Patrika" Newspapers dated 20.2.2008 and 27.3.08.

Please note that Shri R.N. Das, Special Counsel and Shri Tarun Kumar Ghosh, Advocate, have been engaged to appear on your behalf. The matter was discussed with Shri R.N.Das, Special Counsel yesterday. Then Shri R.N. Das, Spl. Counsel is of the opinion that the Deptt. should furnish parawise comments and brief history of the case immediately to him as the matter is very serious one so that the Affidavit in Opposition can be prepared without further loss of time. The matter may come up any day before the Division Bench presided over by the Hon'ble Chief Justice. Shri R.N. Das, Spl. Counsel also desires that a responsible officer from Ministry of Home, who is conversant with the matter, should come down to Kolkata immediately to brief him. You may kindly contact Shri R.N. Das, Special Counsel (Mobile No. 9830268681) and discuss the matter with him.

Yours faithfully,

6/3 25/11/08
(S.Bhattacharyya)

Additional Govt. Advocate/Incharge

7953/DS(2)/108
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7953/10

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A
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Copy to:

Shri Tarun Kumar Ghosh, Advocate, High Court, Kolkata.

- He is requested to get in touch with Shri R.N. Das, Special Counsel.

(S.Bhattacharyya)
Additional Govt. Advocate/Incharge



S K Malhotra
Deputy Secretary (Legal)

Tele : 011-2469 7124

D.O. No.12014 / 6/ 08-Cdn.

Dated, the 9th Jan, 2009

भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS
लोक नायक भवन, खान मार्केट
LOK NAYAK BHAWAN, KHAN MARKET
नई दिल्ली-110003
NEW DELHI-110003

Dear Sir,

Kindly refer to your Letter No. 915 / 11 / C / 2 / 2008 – Pol dated 23rd June, 2008 enclosing therewith a copy of the Writ petition No. 8215 (W) of 2008 filed in the Calcutta High Court and the ID No. 915/11/C/2/2006-Pol. Dated 4.9.2008 on the Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly and others Vs Union of India and others.

2. The matter was referred for advice of AG through the Ministry of Law. A copy of the advice of the AG, in this regard is enclosed. The AG has, inter-alia advised that "there is an averment in paragraph 15 of the Writ Petition that there is 'recently' an order of Central Information Officer whereby some secret and top secret files have become available which were not made available to the Mukherjee Commission of Inquiry. The said order has not been annexed, but references to some newspaper articles have been made. This requires to be looked into. If there is no such order or any top secret file, the same should be brought on affidavit before the High Court. If there is such an order the matter may be looked into as to whether it requires reconsideration. The prayer in the said Writ Petition is to reappoint or continue the JMCI, which should be opposed in as much as Mukherjee Commission took 6 years and 7 months and there is no fresh material or record which was not before the Mukherjee Commission which justifies the reappointment or reopening of the Mukherjee Commission of Inquiry. The petitioner seeks to reappoint or reopen the Justice Mukherjee Commission of Inquiry (JMCI) to complete and/or conduct further enquiries into the alleged death or disappearance of Netaji Subhas Chandra Bose, on the ground that more information may be made available to the Commission due to RTI Act coming into force including 'Secret' and 'Top Secret' files or documents or records relating to alleged Netaji's disappearance or death and conferment of Bharat Ratna Award on Netaji posthumously.

3 Since, the above records purportedly pertain to PMO, it is requested that the exact position with regard to the points raised in para 2 may kindly be clarified immediately i.e., whether additional material has been made available recently against any RTI application, to enable us to finalize submission before the Court. An early response is requested.

With regards,

Yours sincerely,

(S K Malhotra)

Shri Amit Agarwal,
Director,
PMO, New Delhi.

Shri Amit Agarwal
P. B. B. B.

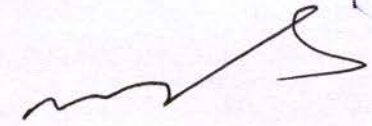
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Most Immediate

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Reference is invited the DO no. 12014/6/08-Cdn. Dated 9.1.09 regarding records pertaining to death and disappearance of Netaji Subhas Chandra Bose disclosed on direction from the Central Information Commission. A set of copies of papers relating to the two right to information cases concerning Netaji Subhas Chandra Bose, wherein certain records have been disclosed, is enclosed, for formulating an appropriate reply in consultation with the Department of Legal Affairs.

31/01/09 (2) 109
28/1/09



(Amit Agrawal)
Director
Tel : 23012613

✓ Ministry of Home Affairs

[Kind attention Shri S K. Malhotra, Deputy Secretary (Legal), Lok Nayak Bhawan, Khan Market, New Delhi]

PMO ID no. RTI/219/2006-PMA

Dated: 21.1.09


Encls.: as above

Copy, for information, to:

Secretary, Department of Legal Affairs

US(L) - on leave.

SO (CON) may pl. pick up this to

US(L) on Tuesday positively. 

SO (CON)

22/1/09.

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CENTRAL INFORMATION COMMISSION

Appeal No.CIC/WB/A/2007/00129 dated 8.2.2007

Right to Information Act 2005 – Section 19

Appellant - Shri Anuj Dhar
Respondent - Prime Minister's Office (PMO)

Facts:

By an application of 3.9.06 Shri Anuj Dhar of Vikas Puri New Delhi applied to the CPIO, PMO seeking the following information:

"I gathered that the Prime Minister's Office (PMO) and the Research and Analysis Wing (R&AW), which reports to the Prime Minister, hold several classified records on Subhash Chandra Bose.

1. Would you kindly let me know whether this information is true or not.
2. If yes, please provide me with a descriptive list of all records and materials (classified and unclassified) on or related to Subhas Chandra Bose the PMO and R&AW are holding, or are in control of; and;
3. Whether the PMO has any plan to transfer these records/ materials to the National Archives?"

To this he received a response on 3.11.06 from Shri Kamal Dayani Director PMO and CPIO as follows:

1. "There are 11 unclassified files in PMO relating to Shri Subhas Chandra Bose. To obtain a copy of the list, you may deposit an amount Rs. 2/- with Cashier, PMO (to be deposited in person)/ or through DD/ Banker's cheque/ Postal Order drawn in favour of Section Officer, PMO.
2. As regards classified files held by PMO on the subject an exercise is being undertaken to review them for declassification. Files which are declassified after review would then be sent to National Archives of India.

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3. As regards records held by Research and Analysis Wing your application is transferred to them for appropriate action. You may contact them for further information in the matter."

While thanking CPIO for his response, Shri Anuj Dhar has nevertheless moved a first appeal on 8.11.2006 before Shri Javed Usmani, Jt. Secretary and First Appellate Authority, PMO pleading that the CPIO Shri Dayani has dealt with unclassified records but has not responded to the portion about classified records/materials. Upon this Shri Sanjay Mitra, Jt. Secretary and First Appellate Authority, PMO in his order of 15.12.'06 directed as follows:

"On verification of the classified files held by PMO, it is held that their disclosure will prejudicially affect relations with foreign countries. In view of this, there is no obligation to disclose the information under Section 8(1)(a) and (f) read with Section 8(2) and 8(3) of the RTI Act. No further action is, therefore, called for on your appeal and it is accordingly disposed of."

Shri Anuj Dhar's prayer before us is as below :

"The Central Information Commission may kindly direct the Prime Minister's Office to provide me with a descriptive list of all classified records and materials on or related to Subhas Chandra Bose the PMO is holding, or is in control of."

In his response to the appeal notice Shri Kamal Dayani, CPIO has reiterated the process described above concluding that *"the information which was not claimed exemption under Section 8(1)(a) and (f) of the RTI Act has already been furnished to the applicant."*

The appeal was heard on 24.1.08. The following are present :

Appellant

Shri Anuj Dhar

Respondents

Shri Amit Agrawal, CPIO & Director PMO

Shri Kshitish Kumar, S.O., PMO

Appellant Shri Anuj Dhar presented a copy of the statement of documents submitted before the Mahajan Commission, a description of which indicates that

some of them were indeed classified, but nevertheless submitted with nomenclature and description before that Commission. He has, therefore, argued that since partial disclosure already stands made of the description of such classified documents, the complete list may now be provided to him. He also cited the Decision of Full Bench of this Commission dated 5.7.2007 in the case of **Mr. Sayantan Dass Gupta vs. Ministry of Home Affairs**, in File No.CIC/AT/C/2006/00087 of 26.06.2007

DECISION NOTICE

This case differs from the case concerning the Sayantan Dass Gupta vs Ministry of Home Affairs case cited by appellant Shri Anuj Dhar in that in the MHA case the plea taken by respondents in not disclosing information was that disclosure would prejudicially effect the integrity and security of the State, hence recourse to Section 8 (1) (a). Since the information sought relates to occurrences, events and matters which have taken place twenty years before the date on which the request of appellant Shri Anuj Dhar was made, as per Section 8 sub-section (3), exemption u/s 8 (1) (f) will not apply. However, the plea taken by PMO in the present case is that the disclosure would prejudicially affect "relation with foreign state" also u/s 8(1) (a), but under different clause. The moot question at issue, therefore, is simply whether the disclosure of a descriptive list of records and materials of such classified material would have that effect and whether public interest in access thereto will outweigh the harm to the protected interest as submitted by appellant Shri Anuj Dhar, in this case the interest of relations with a foreign State, for which Sec 8 (2) would have to be invoked, since Sec 8 (3) will not apply to exemptions u/s 8 (1) (a).

As explained to the parties in the hearing, this Commission does not arrogate to itself the authority to adjudicate on matters concerning foreign relations, an issue to decide upon which the authorised agency competent so to do is the Ministry of External Affairs. In this matter a reference may be made to our Decision in **Appeal No.CIC/OK/A/2007/001392 of 16.1.'08 in Nusli Wadia**

vs MEA , wherein we have held that *"it is not our practice to substitute our judgment on the applicability of exemption to that of the agency duly authorised to determine such issues."* However to satisfy ourselves whether or not PMO has exercised due diligence in arriving at its conclusions in regard to the above on verifiable grounds, CPIO Shri Amit Agrawal, Director PMO will present to us in sealed cover a list of such classified documents together with their description on **15.2.2008 at 4.00 p.m.** After our perusal he will return with this material, again in sealed cover.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
25.1.2008

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar)
Joint Registrar
25.1.2008

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CENTRAL INFORMATION COMMISSION

Adjunct to Appeal No. CIC/WB/A/2007/00129A dated 8-2-2007

Right to Information Act 2005 – Section 19

Appellant: Shri Anuj Dhar

Respondent: Prime Minister's Office (PMO.)

Decision

In our decision of 25.1.2008 we had directed as follows:

"To satisfy ourselves whether or not PMO has exercised due diligence in arriving at its conclusions in regard to the above on verifiable grounds, CPIO Shri Amit Agrawal, Director PMO will present to us in sealed cover a list of such classified documents together with their description on 15.2.2008 at 4.00 p.m. After our perusal he will return with this material, again in sealed cover."

Accordingly Shri Amit Agrawal appeared before us with the sealed envelope required, the contents of which were examined by us. From this it transpires that there are 33 classified files on this subject with two files having been recently de-classified. Of these seven are classified "top secret", three "confidential" and the rest "secret". In four of these files there is reference to foreign states. We have held in our Decision Notice of 25.1.'08 in this case, "As explained to the parties in the hearing, this Commission does not arrogate to itself the authority to adjudicate on matters concerning foreign relations, an issue to decide upon which the authorised agency competent so-to-do is the Ministry of External Affairs." We will therefore not address the issue of whether such reference will "prejudicially effect relation with a foreign state" and accept the plea of respondents that disclosure of the file names will so do. **Under the circumstances Sh Amit Agrawal, CPIO, PMO will provide a list of the 29 remaining files in addition to the two recently declassified listing their title to appellant Shri Anuj Dhar, within 10 working days of receipt of this decision.**

The appeal is thus, partly allowed. Announced.

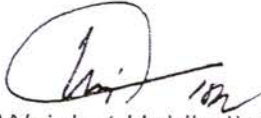


Received
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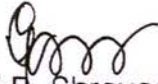
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Notice of this decision be given free of cost to the parties.



(Wajahat Habibullah)
Chief Information Commissioner
18-2-2008

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.



(Pankaj K.R. Shreyaskar)
Joint Registrar
18-2-2008



206 186

Right to Information

PRIME MINISTER'S OFFICE

South Block
New Delhi – 110 101

No. RTI/219/2006-PMA

Dated 14 March - 2008

To:

Shri Anuj Dhar
263, Kangra Niketan
Vikas Puri
New Delhi - 110 018

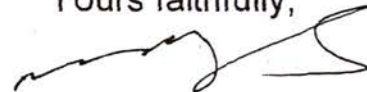
Subject: List of files on Netaji Subhas Chandra Bose in Prime Minister's Office

Sir,

In pursuance of Central Information Commission's order dated 8.2.2008 in Adjunct to Appeal no. CIC/WB/A/2007/00129A, a list of the files referred to in the order is enclosed.

Enclosure : as above

Yours faithfully,



(Amit Agrawal)
Director and
Central Public Information Officer
☎: 2301 2613

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14.3.08

P. No. 1116-116
Prime Minister's Office

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In pursuance of the Central Information Commission's direction dated 25.1.08, the required details (in sealed envelope) are enclosed herewith:



15/2/08

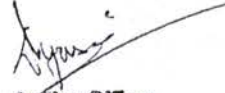
(Amit Agrawal)
Director and
Central Public Information Officer
☎ : 2301 2613

Chief Information Commissioner

Details of files relating to Netaji

S.N.	File No.	Subject
1.	2/658/53-PMS	Jankinath Bhavan at Cuttack, birthplace of Shri Subhas Chandra Bose – acquisition by the Orissa Government of – use of the building as a hospital by the Netaji Subhas Seva Sadan
2.	23(11)/56-57PM	INA Treasure
3.	2/64/56-66-PM(V.1)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
4.	2/64/56-66-PM(V.2)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
5.	2/64/56-67-PM(V.3)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
6.	2/64/56-68-PM(V.4)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
7.	2/64/56-70-PM(V.5)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
8.	2/67/56-71-PM (V.1)	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
9.	2/67/56-71-PM (V.2)	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
10.	2/64/78-PM	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death
11.	2/64/78-PM Annexure	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death- Annexure
12.	2/67/78-PM	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
13.	2/64/79-PM	Death of Netaji Subhash Chandra Bose – Appointment of an inquiry commission to go into the circumstances of – INA treasures etc
14.	2/64/80-PM Annexure	Death of Netaji Subhash Chandra Bose – Appointment of Enquiry Commission to go into the circumstances of – and papers reg. INA treasure, etc.
15.	2/64/86-PM	Death of Netaji Subhash Chandra Bose – Appointment of Enquiry Commission to go into the circumstances of – and papers reg. INA treasure, etc.
16.	800/6/C/3/88-Pol	Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances – papers regarding INA treasure etc.
17.	800/6/C/1/89-Pol	Netaji Subhash Bose
18.	870/11/P/17/90-Pol	Netaji Subhash Chandra Bose – disappearance regarding – reference from Prof. Samar Guha, MP
19.	800/5/C/1/91-Pol(V.1)	Bharat Ratna Award – Maulana Abul Kalam Azad, Subhash Chandra Bose, JRD Tata, Morarji Desai
20.	800/5/P/2/91-Pol	Bharat Ratna Award – Policy papers about – posthumous conferment guidelines – Maulana Abul Kalam Azad, Netaji Subhash Chandra Bose
21.	870/11/P/10/91-Pol	Netaji Subhsash Chandra Bose – disappearance regarding – reference from Prof. Samar Guha, MP
22.	870/11/P/16/92-Pol	Netaji Subhash Chandra Bose - disappearance

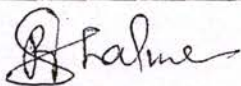

(RAJESH SHARMA)
Section Officer
Prime Minister's Office
New Delhi


Section Officer
Prime Minister's Office
New Delhi

209/89

- 2 -

23.	870/11/P/10/93 Pol(V.2)	Disappearance of Netaji Subhash Chandra Bose
24.	870/11/P/11/95-Pol	Disappearance of Netaji Subhash Chandra Bose
25.	915/11/C/6/96-Pol	Disappearance/ death of Netaji Subhash Chandra Bose, etc.
26.	915/11/C/9/99-Pol(V.1)	Netaji Subhash Chandra Bose – disappearance/ death inquiry reg
27.	23(11)/56-57-PM-NGO	INA Treasure
28.	T-2(64)/78-PM-NGO	Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances of death
29.	G-12(3)/98-NGO	Transfer of the Ashes of Netaji SC Bose to India
30.	G-16(4)/2000-NGO(V.1)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry
31.	G-16(4)/2000-NGO(V.2)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry


 (RAJESH SHARMA)
 Section Officer
 Prime Minister's Office
 New Delhi


 Section Officer
 Prime Minister's Office
 New Delhi

(72) 210

CENTRAL INFORMATION COMMISSION

Appeal No.CIC/WB/A/2006/00785 dated 1.11.2006

Right to Information Act 2005 – Section 19

Appellant - Shri Anuj Dhar
Respondent - Prime Minister's Office

Facts:

By an application of 2.8.06 Shri Anuj Dhar of Vikas Puri, New Delhi sought the following information from the Cabinet Sectt.:

"We would like to request you to provide us with the certified copies of all papers concerning the destruction of file No.12(226)/56-PM titled "Investigation into the circumstances leading to the death of Shri Subhash Chandra Bose". This PMO file was destroyed in 1972 when a judicial inquiry into Netaji's fate was on."

To this he received a response from Dy. Secretary and APIO Cabinet Sectt. dated 17.8.06 informing him, through a copy of the letter addressed to the PMO, that the information sought pertains to the PMO and the application was, therefore, transferred to that office as per sec. 6 (3) of the RTI Act. Accordingly, Shri Kamal Dayani CPIO & Director, PMO, through a letter of 4.9.06, wrote to appellant Shri Anuj Dhar stating that the file in question "was destroyed in 1972 during routine process of review/weeding of old records".

Pleading that he had not been informed of the first Appellate Authority in the response dated 4.9.06, appellant moved his second appeal before us with the following prayer:

"The CIC may kindly direct the PMO and the Cabinet Sectt. To provide us with the certified copies of all papers concerning the destruction of file No. 12(226)/56-PM titled "Investigation into the circumstances leading to the death of Shri Subhash Chandra Bose".

In response to the Notice of hearing Shri Kamal Dayani CPIO of the PMO has admitted that the letter of CPIO did not mention the details of the Appellate

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Authority but stated that the response of CPIO clearly certifies that the "file has been destroyed".

In his rejoinder to this response Shri Anuj Dhar has through an Email of 23.5.07 argued as follows:

"I was constrained to bring the matter before the Commission not merely because Shri Dayani's earlier response had not referred to the name of the first Appellate Authority – the onus of providing whose name was on him under the RTI Act – but because it appeared to me that my request was handled casually by the PMO. A quick read of Shri Dayani's curt answer dated 4th Sept., 2006 would bear this out.

I had specifically requested the Cabinet Sectt. For "certified copies of all papers concerning the destruction of File No.12(226)56-PM. According to a letter dated 4 July 2000 to the Justice Mukherjee Commission of Inquiry (1999-2005) by Director PMO" File ;No.12(226)56-PM which contained agenda paper / cabinet decision regarding "Investigation into the circumstances leading to the death of Shri Subhash Chandra Bose was destroyed in 1972 in the course of routine review/weeding of old records **since records of Cabinet proceedings are kept permanently in Cabinet Sectt. From where they may be procured** (Emphasis author's).

However, the Cabinet Sectt. Passed the mater to the PMO. PMO wrote to me and is reiterating yet again, that the said file was destroyed. A look at my request would show that I never sought this information as the fact of the destruction of file was already known to me, and indeed I had mentioned the same in my request. I had requested for papers concerning the destruction of the file.

I, therefore, feel that no useful purpose would be served by my taking up this matter with the Appellate Authority, PMO, other than unnecessarily prolonging it. I'd also request that honourable Commission to direct the PMO to ascertain facts about the above stated "agenda paper /cabinet decision" from the Cabinet Sectt. before their representative appears at the hearing scheduled on 10th August."

We have, therefore, treated the appeal as a complaint u/s18(1)(e) of the RTI Act, which has been heard on 10.8.07. The following are present:

1. Sh. Anuj Dhar, Appellant

- 212 1a2
(TH)
2. Sh. Jay Bhattacharjee, Assisting Appellant
 3. Sh. Amit Agrawal, Director, PMO
 4. Sh. S.K. Singh, Section Officer, PMO
 5. Sh. V.S. Ragavan, S.O.

Shri Amit Aggarwal, Director PMO submitted the following files for our perusal which he confirmed are the only documents which contain references to the destruction of file No. 12/226/56-PM on the subject "Investigation into the circumstances leading to the death of Netaji". **File no RTI/219/2006/PMO & File No 2(64)56-70 PM Vol V (closed)**. These include a note at page 68 on file No. RTI/219/2006/PMO and a copy of list of destroyed files on page 151 of file No. No 2(64)56-70 PM Vol V, which clearly indicates the destruction of file no. 12/226/56-PM. Shri Aggarwal also clarified that had a further hearing been done with the Appellate Authority in the PMO, this issue could easily have been resolved since the initial response had come from not fully understanding the request of appellant Shri Anuj Dhar.

During the hearing Shri Anuj Dhar submitted a further letter dated 10.8.07 in which he has cited various letters made available by PMO to the Justice Mukherjee Commission of Enquiry into the disappearance of Shri Subhash Chander Bose. He, therefore, stated that there were clearly copies of documents in the PMO on the subject.

DECISION NOTICE

A copy each of page 68/N in. File no RTI/219/2006/PMO and page 151/C of File No 2(64)56-70 PM Vol V (closed) will now be provided to Shri Anuj Dhar within one week of issue of this Decision Notice

A copy of letter of 10.8.07 submitted by appellant Shri Anuj Dhar was handed over to respondent Shri Amit Aggarwal. This document may be examined by the CPIO and if there is any further information that can be provided

213/43
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to him on the basis of this document, this may be treated as a fresh application and the further information provided to him on payment by him of the requisite fee.

This appeal/complaint is accordingly disposed of. However, we take adverse notice of the delay by the Cabinet Sectt. in forwarding an application of 2.8.06 from appellant Shri Anuj Dhar to PMO only on 17.8.06 when under Proviso to Sec. 6(3) of the Act cited by the APIO himself, such a transfer is expected to be made "in no case later than five days from the date of receipt of application". This observation may be noted by CPIO, Cabinet Sectt.

Announced in the hearing.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
10.8.2007

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar)
Joint Registrar
10.8.2007

प्रधान मंत्री कार्यालय
Prime Minister's Office

214
194

South Block,
New Delhi-110101
Dated: 14 August 2007

No. RTI/219/2006-PMA

To

Shri Anuj Dhar,
263, Kangra Niketan,
Vikaspuri,
New Delhi-110018

Subject: Right to information – decision of CIC in the hearing held on
10.8.2007 – follow up action regarding.

Sir,

I am to refer to CIC's decision No.CIC/WB/A/2006/00785 dated 10.8.2007 in the complaint filed by you. As directed by the CIC, I am forwarding herewith extract of file register [page 68/C of file No. RTI/219/2006-PMA] and page No. 151/C of F.No.2(64)/56-70 PM Vol.V indicating the weeding out of file No. 12(226)/56-PM.

2. For the purpose of Section 19 (1) of the RTI Act, Ms. Vini Mahajan is the Appellate Authority for the Prime Minister's Office.

Yours faithfully,

g
(Kamal Dayani)

Director &
Central Public Information Officer
Tele.: 2301 4547

Encl.: As above

21/8
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21/8
16/8

File No.

Subject.

Date of recording.

12(204)/56-PM

Ratification of the Treaty of Cession of the French Establishments of Pondicherry, Karikal, Mahe and Yanam.

destroyed on 18.12.71.

12.4.1957.

12(205)/56-PM

National Film Board and Film Finance Corporation - Establishment of.

-do-

12(206)/56-PM

Construction of a Hotel in the Diplomatic Enclave by Ashoka Hotels Ltd.

Carried over to 1957.

-do-

12(209)/56-PM
Vols. I & II.

Industrial Relations Bill, 1954.

destroyed vol. I on 8.10.71.

-do-

12(210)/56-PM

National Book Trust - Establishment of an Autonomous.

destroyed on 21.1.72.

-do-

12(211)/56-PM

Construction of a Central Conference Hall in New Delhi.

Recorded - C-345
RR J-do-

12(212)/56-PM

Law relating to Copyright-Legislation for amending and consolidating the -

destroyed on 21.1.72.

-do-

12(215)/56-PM

Indian Citizenship Bill.

destroyed on 8.10.71.

-do-

12(219)/56-PM

Monetary Reward to the workers of Sindhri Fertilizer Factory.

-do-

12(223)/56-PM

Coal Miners - New Housing Scheme for-

destroyed on 21.10.71.

RR J

12(225)/56-PM

Indian Delegation to H.R.H. the Duke of Edinburgh's Conference on the social responsibility of Industry.

destroyed on 8.10.71.

-do-

12(227)/56-PM

12(226)/56-PM

Investigation into the circumstances leading to the death of Shri Subhash Chander Bose.

destroyed on 6.5.72.

-do-

12(229)/56-PM

Loan of Rs. 1.45 crores granted by the U.P. Govt. to M/S Sahu Jain Ltd. for a Soda Ash and Ammonium Chloride factory in U.P. - objection raised by the Central Govt. about the grant of -

Recorded - C-345
RR J
16/11/71

-do-

12(230)/56-PM

Continuance of grants in-aid granted under article 278 of the Constitution to the Part 'B' states after the re-organisation of States.

destroyed on 8.10.71.

-do-

12(231)/56-PM

Provision for arbitration in disputes between Directorates General of Supplies and Disposals for purchase of stores.

destroyed on 8.10.71.

-do-

Please check what files
on the subject there are in
Political Section

S.P. Khanna

27.72

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377
PM

The only files available in
this Section, on the subject, are placed
below. There was another file bearing
No. 12/226/56-PM with the subject "
Investigation into the circumstances leading
to the death of Shri Sukhar Chandra Bose"
but this was destroyed on 6-3-72 during
the process of accessioning

SSA
6/7

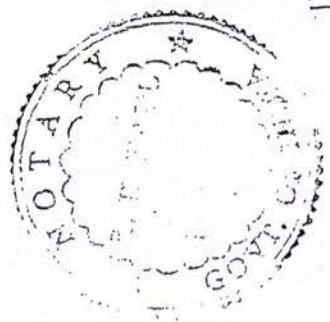
(Vol. I + II only of the file placed below contain
papers pertaining to Panditji's time)

6-7-72

DS/AT

Thanks

10.7.72 S.P. Khanna



Jannar Singh

F. NO. 2 (64) 156-70 PM Vol. V

217 197

Right to Information

PRIME MINISTER'S OFFICE

South Block,
New Delhi 110 011

No. RTI/219/2006-PMA

13 November 2006

To

Shri Anuj Dhar,
263, Kangra Niketan,
Vikas Puri,
New Delhi 110 018.

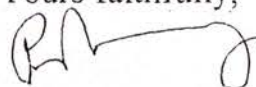
Subject: List of files on Netaji Subhas Chandra Bose in PMO.

Sir,

In continuation of this Office letter of even number dated 3.11.2006 on the above mentioned subject and on receipt of an amount of Rs.2/- towards document charge for one page of information, I am to forward herewith the list of 11 unclassified files of PMO on Netaji Subhas Chandra Bose.

Yours faithfully,

1



(P.K. Roy)

Under Secretary to the Government of India
23018130

PT. W. L. E.
13/11

23/11

14/11

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List of Files relating to Netaji Subhas Chandra Bose

S.No.	File Number	Subject
1.	2(64)/80-PM	Widow and Daughter of Shri Subhas Chandra Bose - Miscellaneous correspondence with and about.
2.	2(64)/81-PM	Death of Shri Netaji Subhas Chandra Bose - appointment of an Inquiry Commission to go into the circumstances of death.
3.	2(64)/82-PM	-do-
4.	2(64)/84-PM	-do-
5.	800/6/C/1/90-Pol	Netaji Subhash C Bose.
6.	800/5/C/1/91-Pol(Vol.I)	Bharat Ratna Award to Netaji Subhas Chandra Bose etc.
7.	800/5/C/1/91-Pol(Vol.II)	Bharat Ratna Award to Netaji Subhas Chandra Bose etc.
8.	800/5/C/1/91-Pol(Vol.III)	Bharat Ratna Award to Netaji Subhas Chandra Bose etc.
9.	800/6/C/1/91-Pol	Disappearance of Netaji Subhash C Bose.
10.	915/11/C/6/96-Pol	Disappearance/Death of Sh. Netaji Subhash C Bose.
11.	915/11/C/9/99-Pol(Vol.III)	Disappearance/Death of Sh. Netaji Subhash C Bose.

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Court Matter / Most Immediate

**Ministry of Home Affairs
I S Division-II : Legal Cell**

Lok Nayak Bhawan, New Delhi-3

**Subject: WP No. 8215 (W) /2008 filed in the Calcutta High Court
by ~~the~~ Subhash Chandra Basu & Anr. Vs UOI & Ors.**

Reference is invited to this Ministry's DO letter of even number dated 9th Jan, 2009 and PMO's ID Note No. RTI / 219/2006-MPA dated 21.01.2009 on the above mentioned subject.

2. Based on the advice of AG and information received from PMO, comments to para 15 of the Writ Petition has been prepared and are enclosed herewith alongwith the original paragraph of WP for vetting by the PMO before the same is sent to the Government Counsel for preparing and filing an affidavit on behalf of the Government of India in the Hon'ble Court.



(Amar Chand)

Under Secretary to the Govt. of India

Tele : 2461 0466

PMO [Kind Attn : Shri Amit Agarwal, Director], South Block, New Delhi -1.

MHA Note ID No.12014/6/2008-Cdn

Dated, the 29th Jan, 2009.

5th Feb.

issued vide
P.B. 5/1/09

ME
6/2

Extracts from W.P. No. 8215(W) 2008 ²²⁰ filed
in the Calcutta High Court by Subhash Chandra
Basu & Anr VS. UOI and others. 200

14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, if appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard.

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5th of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal,

Para 15.

The allegation of the petitioners is denied and disputed to the effect that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry. It is humbly submitted that JMCI only after examining 131 witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits submitted its report on 8th November, 2005. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committee on the death of Shri Subhash Chandra Bose refer to the award of Bharat Ratna award (Posthumously) on Netaji and as such, these do not contain any material which have not been made available to the Commission earlier.

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Court Matter / Most Immediate

**Ministry of Home Affairs
I S Division-II : Legal Cell**

Lok Nayak Bhawan, New Delhi-3

**Subject: WP No. 8215 (W) /2008 filed in the Calcutta High Court
by the Subhash Chandra Basu & Anr. Vs UOI & Ors.**

Reference is invited to this Ministry's I.D. Note of even number dated 29th Jan/5th February, 2009 on the above mentioned subject.

2. The reply of PMO is still awaited which may kindly be expedited without any further delay.

Amar Chand

(Amar Chand)

Under Secretary to the Govt. of India

Tele : 2461 0466

PMO [Kind Attn : Shri Amit Agarwal, Director], South Block, New Delhi -1.

MHA Note ID No.12014/6/2008-Cdn

Dated, the 26th Feb, 2009.

Issued PB 5/08

(B.K. Adhi)
26/2/08

014

PRIME MINISTER'S OFFICE

South Block
New Delhi – 110 101

Subject: WP No. 8215(W)/2008 filed in the Calcutta High Court by Subhash Chandra Basu and Anr. vs Union of India and Ors.

Reference is invited to Ministry of Home Affairs's ID Note no. 12014/6/2008-Cdn dated 5.2.2009 on the above subject.

2. The matter has been considered in this office and it has been noted that at the meeting chaired by the Secretary to the Prime Minister on 1.9.2008, it had been agreed that the Ministry of Home Affairs will act as the nodal Ministry regarding the matter and would keep this office apprised. As such, the question of vetting by PMO does not arise.

3. Against this background, I am directed to convey that the Ministry of Home Affairs may kindly take all necessary measures and make the required averments.


(Amit Agrawal)
Director
☎: 2301 2613

MHA (Kind Attn: Shri Amar Chand, Under Secretary), Lok Nayak Bhavan,
New Delhi

✓ PMO ID Note no. RTI/219/2006-PMA

Dated 27.2.2009

12 put up.
4/13
So (Cdn)

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Court Matter / Most Immediate

Ministry of Home Affairs
I S Division-II : Legal Cell

Lok Nayak Bhawan, New Delhi-3

**Subject: WP No. 8215 (W) /2008 filed in the Calcutta High Court
by the Subhash Chandra Basu & Anr. Vs UOI & Ors.**

Reference is invited to PMO's ID Note No. RTI/219/2006-PMA dated 27th February, 2009 on the above mentioned subject.

2. Ministry of Home Affairs is taking action as per the decision taken in the meeting chaired by Secretary to the Prime Minister on 1.9.2008. However, para 15 of the Writ Petition read with the newspaper cuttings referred to ⁱⁿ the para 15 and enclosed with the petition as Annexure – P/6 relates to direction of CIC given to PMO about some Secret / Top Secret etc files available in PMO. English version of the Newspaper cutting mentioned in the said para is enclosed herewith. It may be seen from these newspapers cutting that references have been made to the records available with PMO. As such, MHA is not able to comment on these records.

3. Therefore, PMO may kindly either suggest an answer to para 15 of the Writ Petition or accord concurrence to the reply prepared by MHA before filing the same in the Hon'ble Court.

Encl : As above.

hsk12
(S K Malthora)
Deputy Secretary to the Govt. of India
Tele : 2469 7124

PMO [Kind Attn : Shri Amit Agarwal, Director], South Block, New Delhi -1.

MHA Note ID No.12014/6/2008-Cdn

Dated, the 16th March, 2009.

issued
PB 5/09 dated 17/3/09
B. K. Singh

CIC DIRECTED PMO TO GIVE LIST OF 29 FILES ON NETAJI

Name of the News Paper 'Bartaman'

New Delhi, 19 February, 2008 - Chief Information Commissioner Shri Wahjat Habibullah directed the PMO to bring to the notice of the public the list and title of 29 secret files relating to Netaji within 10 days, this was in continuation with its earlier direction dated 15th February. These 29 files marked as 'Top Secret', 'Confidential' and 'Secret' are kept in the PMO. CIC gave written direction to the Director PMO Shri Amit Aggarwal that this list is to be given to the organization named 'Mission Netaji' of Delhi. This organization has filed a RTI petition for the above information.

Earlier PMO has informed the CIC that if the information is made public it can effect the relation with a particular Country. CIC has directed that they are not directing to divulge the contents of the file. On 15th February CIC directed PMO to submit in sealed cover the details and contents of the secret files, the PMO had submitted a list of 35 files out of which 2 files has been declassified and its contents has been made public. The CIC informed that out of the 33 secret files 7 are Top Secret, 3 Confidential, 23 Secret and out of these 33 files 4 relates to Foreign Affairs, as such information has been asked on 29 files.

P. 66/cor.

LIST OF 29 SECRET FILES ALONG WITH LETTERS OF NETAJI'S WIFE AND DAUGHTER MADE PUBLIC BY THE CENTRE

Name of the News Paper 'Bartaman'

New Delhi 26th March, 2008 - Under RTI Central Government was forced to provide information on 29 files relating to disappearance of Netaji. These files are kept in a vault of PMO alongwith letters to the Government of India from wife of Netaji Smt. Emily Sechel and daughter Ms Anita Basu. 'Mission Netaji' of Delhi sought the information from PMO. But the Central Government did not gave the details of the Secret files stating that sovereignty of the country and relating with some other country may get effected if contents of these files are divulged. On 8th February Chief Information Commissioner directed the PMO to bring to the notice of the public the list and title of 29 secret files relating to Netaji. Other then these files the letter from the wife and daughter of Netaji papers relating to Ashes of Netaji, Indian National Army and its Treasury, Policy Paper on conferring 'Bharat Ratna' posthumously etc are also kept in PMO. The CIC informed that out of the 29 secret files 7 are Top Secret, 3 Confidential, 23 Secret.

Name of the News Paper 'Anand Bazar Patrika'

New Delhi 26th March, 2008 - Under RTI Central Government was forced to provide information on 29 files relating to disappearance of Netaji. So far these information were kept in the PMO as Top Secret. Other then these files the letter from the wife and daughter of Netaji papers relating to Ashes of Netaji, Indian National Army and its Treasury, Policy Paper on conferring 'Bharat Ratna' posthumously etc are also kept in PMO.

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Forwarded the following **TOP SECRET** File(s)/ID-UO Note/DO letters Nos.

1. No. 1249196/PMO/2009-Pol dated: 19-3-09

2. _____

addressed to Sh. S. K. Malhotra, JS. MHA

Date 19-3-09 Time: 1820 hrs.

Section Officer
(NGO Section)

Received the above mentioned document(s).

Date _____

Signature _____

Time _____

Designation

To be returned to:-

**The Section Officer (NGO),
Prime Minister's Office,
South Block, New Delhi**

(N.B.): - (This acknowledgment should be signed by the receiving officer and returned promptly to the sender of the Prime Minister's Office, New Delhi, not later than 48 hours of its receipt in any case).

परम गुप्त
TOP SECRET

Most Immediate

PRIME MINISTER'S OFFICE
[POLITICAL SECTION]

South Block, New Delhi – 110 101

Sub: Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & Anr. Vs UOI & Ors.

Reference is invited to Ministry of Home Affairs' ID note no. 12014/6/2008-Cdn dated March 16, 2009 on the above subject.

2. The following relevant documents on the subject are being forwarded:

- (i) Copy of the letter by which the list of the files on Netaji Subhas Chandra Bose provided to CIC with reference to a RTI request of Shri Anuj Dhar, r/o Vikas Puri, New Delhi.
- (ii) Copies of the letters dated July 4, 2000 and July 25, 2000, by which the list of files on disappearance of Netaji Subhas Chandra Bose was provided to the Justice Mukherjee Commission of Inquiry.
- (iii) Copy of the letter dated July 24, 2000 by which the list of Top Secret files on disappearance of Netaji Subhas Chandra Bose was provided to the Justice Mukherjee Commission of Inquiry. [Top Secret document, being sent separately].

3. The Justice Mukherjee Commission of Inquiry was not made available the following 4 files due to the following reasons, out of the list of files made available to CIC:

- (a) Files at Sl. No. 19 and 20 – The files does not relate to disappearance of Netaji Subhash Chandra Bose, but related to Bharat Ratna Award.
- (b) Files at Sl. No. 30 and 31 - Request of Justice Mukherjee Commission of Inquiry seeking relevant Top Secret files, were dealt with on these two files.

4. I am directed to request that the Ministry of Home Affairs may kindly take necessary action in the matter.

(Amit Agrawal)

Director

Tel. 2301 2613

Fax No. 23016857

Home Secretary

PMO ID no. 1249196/PMO/2009-Pol.

Dated March 19, 2009

Encl: as above

n.o.o.

✓ Copy, with enclosures, to:

Ministry of Home Affairs [Attn: Shri S. K. Malthora, Deputy Secretary]

WS(L)

23/3/09

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Right to Information

PRIME MINISTER'S OFFICE

South Block
New Delhi - 110 101

No. RTI/219/2006-PMA

Dated 14 March - 2008

To:

Shri Anuj Dhar
263, Kangra Niketan
Vikas Puri
New Delhi - 110 018

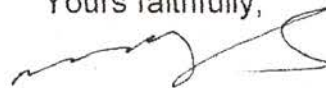
Subject: List of files on Netaji Subhas Chandra Bose in Prime Minister's Office

Sir,

In pursuance of Central Information Commission's order dated 8.2.2008 in Adjunct to Appeal no. CIC/WB/A/2007/00129A, a list of the files referred to in the order is enclosed.

Enclosure : as above

Yours faithfully,



(Amit Agrawal)
Director and
Central Public Information Officer
☎: 2301 2613

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14.3.08

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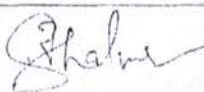
14.3.08


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RTI/219/06-PMA

Details of files relating to Netaji


S.N.	File No.	Subject
✓ 1.	2/658/53-PMS	Jankinath Bhavan at Cuttack, birthplace of Shri Subhas Chandra Bose - acquisition by the Orissa Government of - use of the building as a hospital by the Netaji Subhas Seva Sadan
✓ 2.	23(11)/56-57PM	INA Treasure
3.	2/64/56-66-PM(V.1)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
4.	2/64/56-66-PM(V.2)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
5.	2/64/56-67-PM(V.3)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
6.	2/64/56-68-PM(V.4)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
7.	2/64/56-70-PM(V.5)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
✓ 8.	2/67/56-71-PM (V.1)	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
✓ 9.	2/67/56-71-PM (V.2)	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
✓ 10.	2/64/78-PM	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death
✓ 11.	2/64/78-PM Annexure	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death- Annexure
✓ 12.	2/67/78-PM	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
✓ 13.	2/64/79-PM	Death of Netaji Subhash Chandra Bose - Appointment of an inquiry commission to go into the circumstances of - INA treasures etc
✓ 14.	2/64/80-PM Annexure	Death of Netaji Subhash Chandra Bose - Appointment of Enquiry Commission to go into the circumstances of - and papers reg. INA treasure, etc.
✓ 15.	2/64/86-PM	Death of Netaji Subhash Chandra Bose - Appointment of Enquiry Commission to go into the circumstances of - and papers reg. INA treasure, etc.
✓ 16.	800/6/C/3/88-Pol	Death of Netaji Subhash Chandra Bose - Appointment of an enquiry commission to go into the circumstances - papers regarding INA treasure etc.
✓ 17.	800/6/C/1/89-Pol	Netaji Subhash Bose
✓ 18.	870/11/P/17/90-Pol	Netaji Subhash Chandra Bose - disappearance regarding - reference from Prof. Samar Guha, MP
19.	800/5/C/1/91-Pol(V.1)	Bharat Ratna Award - Maulana Abul Kalam Azad, Subhash Chandra Bose, JRD Tata, Morarji Desai
20.	800/5/P/2/91-Pol	Bharat Ratna Award - Policy papers about - posthumous conferment guidelines - Maulana Abul Kalam Azad, Netaji Subhash Chandra Bose
✓ 21.	870/11/P/10/91-Pol	Netaji Subhsash Chandra Bose - disappearance regarding - reference from Prof. Samar Guha, MP
✓ 22.	870/11/P/16/92-Pol	Netaji Subhash Chandra Bose - disappearance


(RAJESH SHARMA)
Section Officer
Prime Minister's Office
New Delhi


Section Officer
Prime Minister's Office
New Delhi

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23.	870/11/P/10/93 Pol(V.2)	Disappearance of Netaji Subhash Chandra Bose
24.	870/11/P/11/95-Pol	Disappearance of Netaji Subhash Chandra Bose
25.	915/11/C/6/96-Pol	Disappearance/ death of Netaji Subhash Chandra Bose, etc.
26.	915/11/C/9/99-Pol(V.1)	Netaji Subhash Chandra Bose – disappearance/ death inquiry reg
27.	23(11)/56-57-PM-NGO	INA Treasure
28.	T-2(64)/78-PM-NGO	Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances of death
29.	G-12(3)/98-NGO	Transfer of the Ashes of Netaji SC Bose to India
30.	G-16(4)/2000-NGO(V.1)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry
31.	G-16(4)/2000-NGO(V.2)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry


(RAJESH SHARMA)
Section Officer
Prime Minister's Office
New Delhi


Section Officer
Prime Minister's Office
New Delhi

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Prime Minister's Office

No. 915/11/C/2/2000-Pol

4th July, 2000

**From : Ms. Archana Ranjan,
Director
Prime Minister's Office
South Block,
New Delhi.-110011.**

**To: Shri P.K. Sengupta
WBHJS (Retd.)
Secretary,
Justice Mukherjee Commission of Inquiry
B' Block, (Third Floor)
11/A Mirza Ghalib Street, Calcutta 700 087.**


Sir,

I am directed to refer to your letter No.JMC/Meeting/48/95 dated 23rd May, 2000 and to forward the photocopies of the files/records concerning Netaji Subhas Chandra Bose/INS as per the list enclosed. Two files which are classified as Top Secret, are being sent separately.

2. The file No.12(226)/56-PM which contained agenda paper/cabinet decision regarding "Investigation into the circumstance leading to the death of Shri Subhash Chandra Bose" was destroyed in 1972 in course of routine review/weeding of old records since records of Cabinet proceedings are kept permanently in Cabinet Secretariat. from where they may be procured.

3. Certain documents of F.No.23(156)/51-PM required by the Commission have been destroyed while recording that file in 1969. The list of the papers destroyed may kindly be seen in that file.

Yours faithfully,


[Archana Ranjan]
Director

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List of files on Netaji Subhash Chandra Bose
located in PMO records:

Sl.No.	Files Number	Subject
✓1.	23(156)/51-PM (Secret)	Disposal of properties of Indian National Army in the far East.
*2.	23(11)/56-57-PM (Top Secret)	I.N.A Treasure.
*3.	2(64)/56-66-PM Vol. I,III,IV&V (Secret) Vol.II - (Top Secret)	(i) Death of Sh. S.C.Bose. (ii) Appointment of an Enquiry Committee to go into the circumstances of the death.
4.	2(64)/78-PM (Secret)	- do-
5.	2(64)/79-PM (Confidential)	- do-
✓6.	2(64)/80-PM	- do-
7.	2(64)/81-PM	- do-
8.	2(64)/82-PM	- do-
9.	2(64)/84-PM	- do-
✓10.	2(64)/86-PM (Secret)	- do-
✓11.	800/6/C/3/88-Pol (Secret)	-do-
✓12.	800/6/C/1/89-Pol (Secret)	Netaji Subhash Bose
13.	800/6/C/1/90-Pol	Netaji Subhash Bose
14.	800/6/C/1/91-Pol	Disappearance of Netaji Subhash Bose
15.	915/11/C/6/96-Pol	Disappearance/death of Sh. S.C.Bose.
✓16. 91	5/11/C/9/99-Pol [Vol. I,II & III] (Vol.I-Secret)	Disappearance/death of Shri S.C. Bose.

*Regarding F.Nos. 23(11)/56-57-PM and 2(64)/56-66-PM (Vol.II) bei

Top Secret a further communication will follow.

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SECRET

Prime Minister's Office

No. 915/11/C/2/2000-Pol

25th July, 2000

From : Ms. Archana Ranjan,
Director
Prime Minister's Office
South Block,
New Delhi-110011.

To: Shri P.K. Sengupta
WBHJS (Retd.)
Secretary,
Justice Mukherjee Commission of Inquiry
B' Block, (Third Floor)
11 A Mirza Ghalib Street, Calcutta 700 087.

Sir,

In continuation of my letter dated 4th July, 2000 I am desired to forward photo copies of 10 more files relating to Netaji Subhas Chandra Bose/INA which have since been located in PMO records (as per list attached).

One more file (F.No.2(381)60-66-PM - proposal to bring Shri Subhas Chandra Bose's ashes from Tokyo and to put up a memorial to him in front of the Red Fort in Delhi) is not readily traceable and would be sent when found. Efforts to locate it are on.

Yours faithfully,


[Archana Ranjan]
Director

List of files on Netaji Subhash Chandra Bose
located in PMO records:

Sl.No.	Files Number	Subject
✓1.	2(67)/56-71-PM Vol.I & II (secret)	Widow and daughter of Shri Subhas Chandra Bose Misc. correspondence with and about.
✓2.	2(67)/78-PM (secret)	-do-
✓3.	2(64)/78-PM Annexure to S.No.38 (confidential)	Death of Netaji Subhas Chandra Bose - appointment of an Inquiry Commission to go into the circumstances of death).
*4.	2(64)/80-PM (Annexure) (secret)	-do-
✓5.	2(658)/53-PMS (secret)	Jankinath Bhavan at Cuttack. Birth place of Shri Subhas Chandra Bose - acquisition by the Orissa Govt. of - use of the building as a Hospital by the Netaji Subhas Seva Sadan.
✓6.	870/11/P/17/90-Pol (secret)	Netaji Subhas Chandra Bose - disappearance regarding - Sh. Samar Guha, MP's letter forwarded by the President.
✓7.	870/11/P/10/91-Pol (secret)	-do-

* Regarding F.Nos.2(64)/78-PM Annexure to S.No.38 and 2(64)/80-PM(Annexure) - Photo copy of the main files have been made available to the Commission vide letter No.915/11 C 2 2000-Pol dated 4 7 2000.

8. 870/11/P/16 92-Pol
(confidential) Netaji Subhas Chandra Bose -
disappearance of papers regarding.
9. 870/11/P/10/93-Pol Vol.I&II Disappearance of Netaji Subhas
(secret) Chandra Bose return of the ashes of
Shri Netaji Subhash Chandra Bose
from Japan to India.
- ✓10. 870/11/P/11/95-Pol Disappearance of Netaji Subhas
(secret) Chandra Bose.

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Extract from W.P. No. 8215 (W) 2006 filed
in the Calcutta High Court by Subhash Chandra
Bose & Anr VS. UOI and others

14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, as appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

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which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard.

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5th of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal,

PARAWISE COMMENTS TO WP NO.8215(W)/2008

Para 15.

The allegation of the petitioners is denied and disputed to the effect that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry. It is humbly submitted that JMCI only after examining 131 witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits submitted its report on 8th November, 2005. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committee on the death of Shri Subhash Chandra Bose refer to the award of Bharat Ratna award (Posthumously) on Netaji and as such, these do not contain any material which have not been made available to the Commission earlier.

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BY SPEED POST

TOP SECRET

PRIME MINISTER'S OFFICE

No. G-16(4)/2000-NGO

Dated the 24th July, 2000.

From: Ms. Archana Ranjan,
Director,
Prime Minister's Office,
South Block,
New Delhi-110011.

To: Shri P.K. Sengupta,
WBHJS(Retd.),
Secretary,
Justice Mukherjee Commission of Inquiry,
B-Block (Third Floor),
11/A, Mirza Ghalib Street,
Calcutta-700 087.

For Acknowledgement
see page
10/c.

Sir,

In continuation of my letter No.915/11/C/2/2000-Pol dated 4th July, 2000, the photo-copies of the following Top Secret/Secret files are forwarded:-

<u>Sl. No.</u>	<u>File No.</u>	<u>Subject</u>
1.	23(11)/56-57-PM (T.S.)	- I.N.A. Treasure.
2.	2(64)/56-66-PM (T.S.) (Vol.II)	- 1. Death of Shri Subhash Chandra Bose. 2. Appointment of an Enquiry Committee to go into the circumstances of the death.
3.	G-12(18)/94-NGO (T.S.)	- Controversy regarding Netaji's death and bringing his ashes to India from Japan.
4.	G-16(3)/95-NGO (T.S.)	- Proposal to bring the mortal remains of Netaji Subhash Chandra Bose from Japan to India.
5.	G-4(2)/95-NGO (T.S.)	- Proposal to bring the mortal remains of Netaji Subhash Chandra Bose from Japan to India - (Cabinet Meeting).
6.	G-12(3)/98-NGO (T.S.)	- Transfer of the Ashes of Netaji Subhas Chandra Bose to India.
7.	T-2(64)/78-PM (Secret)	- Death of Netaji Subhas Ch. Bose - Appointment of an inquiry commission to go into the circumstances of death. ...2/-

2. Please acknowledge receipt.

3. It is further requested that while information contained in the 'Top Secret' papers may be made use of by the Commission, in camera, since these are classified as 'Top Secret', they may kindly consider not publishing the same.

Yours faithfully,


(Archana Ranjan)
Director

Ends. As above.



Dy. Secy. 488/2009 J
21/3/09

T-235/HS/2009
20/3/09

परम गुप्त
TOP SECRET

Most Immediate



PRIME MINISTER'S OFFICE
[POLITICAL SECTION]

South Block, New Delhi - 110 101

Sub: Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & Anr. Vs UOI & Ors.

Reference is invited to Ministry of Home Affairs' ID note no. 12014/6/2008-Cdn dated March 16, 2009 on the above subject.

The following relevant documents on the subject are being forwarded:

- Pl. see summary
for
and purp.
- (i) Copy of the letter by which the list of the files on Netaji Subhas Chandra Bose provided to CIC with reference to a RTI request of Shri Anuj Dhar, r/o Vikas Puri, New Delhi.
- (ii) Copies of the letters dated July 4, 2000 and July 25, 2000, by which the list of files on disappearance of Netaji Subhas Chandra Bose was provided to the Justice Mukherjee Commission of Inquiry.
- (iii) Copy of the letter dated July 24, 2000 by which the list of Top Secret files on disappearance of Netaji Subhas Chandra Bose was provided to the Justice Mukherjee Commission of Inquiry. [Top Secret document, being sent separately].

3. The Justice Mukherjee Commission of Inquiry was not made available the following 4 files due to the following reasons, out of the list of files made available to CIC:

- JS (IS)
- (a) Files at Sl. No. 19 and 20 - The files does not relate to disappearance of Netaji Subhash Chandra Bose, but related to Bharat Ratna Award.
- (b) Files at Sl. No. 30 and 31 - Request of Justice Mukherjee Commission of Inquiry seeking relevant Top Secret files, were dealt with on these two files.

4. I am directed to request that the Ministry of Home Affairs may kindly take necessary action in the matter.

(Amit Agrawal)

Director

Tel. 2301 2613

Fax No. 23016857

Home Secretary

PMO ID no. 1249196/PMO/2009-Pol.1

Dated March 19, 2009

Encl: as above

24/3

VS

PRIME MINISTER'S OFFICE

South Block
New Delhi - 110 101

No. RTI/219/2006-PMA

Dated 14 March - 2008

To:

Shri Anuj Dhar
263, Kangra Niketan
Vikas Puri
New Delhi - 110 018

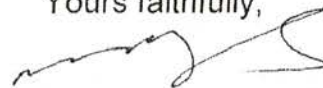
Subject: List of files on Netaji Subhas Chandra Bose in Prime Minister's Office

Sir,

In pursuance of Central Information Commission's order dated 8.2.2008 in Adjunct to Appeal no. CIC/WB/A/2007/00129A, a list of the files referred to in the order is enclosed.

Enclosure : as above

Yours faithfully,



(Amit Agrawal)
Director and
Central Public Information Officer
☎: 2301 2613

14.3.08

14.3.08

14.3.08

14.3.08

Details of files relating to Netaji

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4.	2/64/56-66-PM(V.2)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
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10.	2/64/78-PM	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death
11.	2/64/78-PM Annexure	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death- Annexure
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21.	870/11/P/10/91-Pol	Netaji Subhash Chandra Bose - disappearance regarding - reference from Prof. Samar Guha, MP
22.	870/11/P/16/92-Pol	Netaji Subhash Chandra Bose - disappearance


(Signature)
 (RAJENDU CHAKRAVARTY)
 Section Officer
 Prime Minister's Office
 New Delhi

(Signature)
 Section Officer
 Prime Minister's Office
 New Delhi

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-2-

23.	870/11/P/10/93 Pol(V.2)	Disappearance of Netaji Subhash Chandra Bose
24.	870/11/P/11/95-Pol	Disappearance of Netaji Subhash Chandra Bose
25.	915/11/C/6/96-Pol	Disappearance/ death of Netaji Subhash Chandra Bose, etc.
26.	915/11/C/9/99-Pol(V.1)	Netaji Subhash Chandra Bose – disappearance/ death inquiry reg
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29.	G-12(3)/98-NGO	Transfer of the Ashes of Netaji SC Bose to India
30.	G-16(4)/2000-NGO(V.1)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry
31.	G-16(4)/2000-NGO(V.2)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry


 (RAJESH SHARMA)
 Section Officer
 Prime Minister's Office
 New Delhi


 Section Officer
 Prime Minister's Office
 New Delhi

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Prime Minister's Office

No. 915/11/C/2/2000-Pol

4th July, 2000

From : Ms. Archana Ranjan,
Director
Prime Minister's Office
South Block,
New Delhi.-110011.

To: Shri P.K. Sengupta
WBHJS (Retd.)
Secretary,
Justice Mukherjee Commission of Inquiry
B' Block, (Third Floor)
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Yours faithfully,


[Archana Ranjan]
Director

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List of files on Netaji Subhash Chandra Bose
located in PMO records:

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5.	2(64)/79-PM (Confidential)	- do-
✓6.	2(64)/80-PM	- do-
7.	2(64)/81-PM	- do-
8.	2(64)/82-PM	- do-
9.	2(64)/84-PM	- do-
✓10.	2(64)/86-PM (Secret)	- do-
✓11.	800/6/C/3/88-Pol (Secret)	-do-
✓12.	800/6/C/1/89-Pol (Secret)	Netaji Subhash Bose
13.	800/6/C/1/90-Pol	Netaji Subhash Bose
14.	800/6/C/1/91-Pol	Disappearance of Netaji Subhash Bose
15.	915/11/C/6/96-Pol	Disapperance/death of Sh. S.C.Bose.
✓16. 91	5/11/C/9/99-Pol [Vol. I,II & III] (Vol.I-Secret)	Disappearance/death of Shri S.C. Bose.

*Regarding F.Nos. 23(11)/56-57-PM and 2(64)/56-66-PM (Vol.II) bei

Top Secret a further communication will follow.

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SECRET

Prime Minister's Office

No. 915/11/C/2/2000-Pol

25th July, 2000

From : Ms. Archana Ranjan,
Director
Prime Minister's Office
South Block,
New Delhi.-110011.

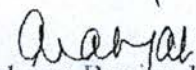
To: Shri P.K. Sengupta
WBHJS (Retd.)
Secretary,
Justice Mukherjee Commission of Inquiry
B' Block. (Third Floor)
11 A Mirza Ghalib Street. Calcutta 700 087.

Sir,

In continuation of my letter dated 4th July, 2000 I am desired to forward photo copies of 10 more files relating to Netaji Subhas Chandra Bose/INA which have since been located in PMO records (as per list attached).

One more file (F.No.2(381)-60-66-PM -- proposal to bring Shri Subhas Chandra Bose's ashes from Tokyo and to put up a memorial to him in front of the Red Fort in Delhi) is not readily traceable and would be sent when found. Efforts to locate it are on.

Yours faithfully.


[Archana Ranjan]
Director

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List of files on Netaji Subhash Chandra Bose
located in PMO records:

Sl.No.	Files Number	Subject
✓1.	2(67)/56-71-PM Vol.I & II (secret)	Widow and daughter of Shri Subhas Chandra Bose Misc. correspondence with and about.
✓2.	2(67)/78-PM (secret)	-do-
✓3.	2(64)/78-PM Annexure to S.No.38 (confidential)	Death of Netaji Subhas Chandra Bose – appointment of an Inquiry Commission to go into the circumstances of death).
*4.	2(64)/80-PM (Annexure) (secret)	-do-
✓5.	2(658)/53-PMS (secret)	Jankinath Bhavan at Cuttack. Birth place of Shri Subhas Chandra Bose – acquisition by the Orissa Govt. of – use of the building as a Hospital by the Netaji Subhas Seva Sadan.
✓6.	870/11/P/17/90-Pol (secret)	Netaji Subhas Chandra Bose - disappearance regarding – Sh. Samar Guha, MP's letter forwarded by the President.
✓7.	870/11/P/10/91-Pol (secret)	-do-

* Regarding F.Nos.2(64)/78-PM Annexure to S.No.38 and 2(64)/80-PM(Annexure) - Photo copy of the main files have been made available to the Commission vide letter No.915/11 C 2 2000-Pol dated 4 7 2000.

8. 870/11/P/16 92-Pol
(confidential) Netaji Subhas Chandra Bose -
disappearance of papers regarding.
9. 870/11/P/10/93-Pol Vol.I&II Disappearance of Netaji Subhas
(secret) Chandra Bose return of the ashes of
Shri Netaji Subhash Chandra Bose
from Japan to India.
- ✓ 10. 870/11/P/11/95-Pol Disappearance of Netaji Subhas
(secret) Chandra Bose.

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Extract, from W.P. No. 8215(W) 2008 filed
in the Calcutta High Court by Subhas Chandra
Bose & Anr vs. UOI and others

14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, if appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

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which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard.

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5th of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal,

PARAWISE COMMENTS TO WP NO.8215(W)/2008

Para 15.

The allegation of the petitioners is denied and disputed to the effect that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry. It is humbly submitted that JMCI only after examining 131 witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits submitted its report on 8th November, 2005. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committee on the death of Shri Subhash Chandra Bose refer to the award of Bharat Ratna award (Posthumously) on Netaji and as such, these do not contain any material which have not been made available to the Commission earlier.

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BY SPEED POST
TOP SECRET

PRIME MINISTER'S OFFICE

No. G-16(4)/2000-NGO

Dated the 24th July, 2000.

From: Ms. Archana Ranjan,
Director,
Prime Minister's Office,
South Block,
New Delhi-110011.

To: Shri P.K. Sengupta,
WBHJS(Retd.),
Secretary,
Justice Mukherjee Commission of Inquiry,
B-Block (Third Floor),
11/A, Mirza Ghalib Street,
Calcutta-700 087.

For Acknowledgement
see page
16/c.

Sir,

In continuation of my letter No.915/11/C/2/2000-Pol dated 4th July, 2000, the photo-copies of the following Top Secret/Secret files are forwarded:-

<u>Sl. No.</u>	<u>File No.</u>	<u>Subject</u>
1.	23(11)/56-57-PM (T.S.)	I.N.A. Treasure.
2.	2(64)/56-66-PM (T.S.) (Vol.II)	1. Death of Shri Subhash Chandra Bose. 2. Appointment of an Enquiry Committee to go into the circumstances of the death.
3.	G-12(18)/94-NGO (T.S.)	Controversy regarding Netaji's death and bringing his ashes to India from Japan.
4.	G-16(3)/95-NGO (T.S.)	Proposal to bring the mortal remains of Netaji Subhash Chandra Bose from Japan to India.
5.	G-4(2)/95-NGO (T.S.)	Proposal to bring the mortal remains of Netaji Subhash Chandra Bose from Japan to India - (Cabinet Meeting).
6.	G-12(3)/98-NGO (T.S.)	Transfer of the Ashes of Netaji Subhas Chandra Bose to India.
7.	T-2(64)/78-PM (Secret)	Death of Netaji Subhas Ch. Bose - Appointment of an inquiry commission to go into the circumstances of death. ...2/-

- 2 -

2. Please acknowledge receipt.

3. It is further requested that while information contained in the 'Top Secret' papers may be made use of by the Commission, in camera, since these are classified as 'Top Secret', they may kindly consider not publishing the same.

Yours faithfully,


(Archana Ranjan)
Director

Encls. As above.





By Speed Post 237
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No.12014 /6/ 08-Cdn.
Government of India
Ministry of Home Affairs
IS Division : Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-3.

Dated , the 2nd April, 2009.

To

Shri S. Bhattacharyya,
Additional Govt. Advocate/Incharge,
Ministry of Law and Justice,
Deptt. of Legal Affairs, Branch Sectt.
11, Strand Road, 2nd Floor,
Kolkata-700 001.

- 2 APR 2009

Subject: W.P. No. 8215 (W) of 2008 – Shri Subhash
Chandra Basu & Anr. –vs- Union of India & Others.

Sir,

With reference to your letter NO. 592/Home/08-
Lit.iii/2964/818 dated 25th November, 2008 on the above
mentioned subject, I am directed to enclose parawise
comments of the Ministry of Home
Affairs on the Writ Petition for information and further
necessary action. An officer of the Ministry of Home
Affairs would be deputed to Kolkata to meet you and Shri
R.N. Das to brief in the matter as and when desired.

Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Govt. of India

Tel: 24610466

Encl : As above.

Parawise comments of Ministry of Home Affairs on WP No.8215(W)/2008 – Shri Subhash Chandra Basu & others Vs. Union of India & others.

Addition

1. Averments made in para 1 need no comments as these are matters to be established by the Petitioners before the Hon'ble Court.
2. Averments made in para 2 need no comments as these are matters to be established by the petitioners before the Hon'ble Court.
3. With regard to averments made in para 3, it is stated that :-
 - (i) the disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the very beginning. The Government of India has, so far, appointed three Committee/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report. The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted

its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

(ii)

Subsequently, a writ petition was filed before the Kolkata High Court and a Division Bench by its judgement dated 30th April, 1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose. Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, ^{since} retired Judge of the Supreme Court on 14th May, 1999 to inquire into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;

- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(iii) Justice Mukherjee Commission of Inquiry, (JMCI), submitted its report on 8th November, 2005 with the following findings:-

S. No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

(iv) The report of the JMCI was thoroughly examined. It was found that the Commission's inquiry was inconclusive in many ways and it had not been able to provide definitive

findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of JMCI, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated ^{to} for third degree burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

- (v) The report of the JMCI was placed before both the Houses of Parliament along with the ATR on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-
- "2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-
- a) Netaji did not die in the plane crash; and

b) The ashes in the Renkoji Temple were not of Netaji.

^{The}
This Report is placed before the Houses as required under sub-section 4 of Section 3 of the Commissions of Inquiry Act, 1952". ^{6.}

- (vi) it would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant

for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

4. Averments made in para 4 need no comments, as these are matters of records.

5. Averments made in para 5 need no comments, as these are matters of records.

6. Averments made in para 6 need no comments, as these are matters of records.

statement
graph 11/24/11
with citation
6. 7. With regard to the averments made in para 7, the answering respondents want to say that on recommendations of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. A press communiqué announcing the conferment of award was issued by the President's Secretariat on January 22, 1992. In the case of posthumous awards, the award has to be received by the next of kin (NOK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was contacted in this connection, expressed certain reservations on receiving the award as according to her *said* such an honour should have been appropriate in the fifties and felt that one cannot honour Netaji today by awarding the Bharat Ratna to him. She declined to receive the award. Apart from declining of the award by Netaji's daughter, some persons submitted a memorandum to the then President. There was also criticism in Parliament and the media about the award. The crux and essence of all this was that the award was too late in the day for Netaji and also on the ground that it was not appropriate for the

Govt. to announce the award 'posthumously' in the absence of credible evidence of Netaji's death. However, it was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award is actually conferred by the President during the presentation ceremony. Since the award was declined by the NOK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.

8. Averments made in para 8 need no comments, as these are matters of records.

9. Averments made in para 9 need no comments, as these are matters of records.

10. Averments made in para 10 need no comments, as these are matters of records.

11. Averments made in para 11 need no comments, as these are matters of records.

12. Averments made in para 12 need no comments, as these are matters of records.

12.1 Averments made in para 12.1 need no comments, as these are matters of records.

6 A to be type d

7. change

13. The answering respondent denies and disputes that the Central Government has rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.5.2006 without assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined, but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is further submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they also relied on oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission, therefore, does not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission ^{and therefore change} of Inquiry. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the

also
Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

14. The answering respondent reiterates what has been stated in para 13 above.

14.1 Averments made in para 14 need no comments, as these are matters of records.

14.2 The answering respondent reiterates what has been stated in para 13 above.

7 A additions
8.

~~15. The allegation of the petitioners~~ that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry is denied and disputed. It is submitted that JMCI submitted its report on 8th November, 2005 after examining witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committee on the death

conferment of

of Shri Subhash Chandra Bose, refer to the award of Bharat Ratna award (Posthumously) on Netaji and as such, these do not contain any material which have not been made available to the Commission earlier.

16. Averments made in para 16 need no comments as these are matters of records.

9. Addition

16.1 Averments made in para 16.1 need no comments as these are matters of records. However, it is stated that Shri Naresh Jaiswal was working in the Ministry of Home Affairs in the capacity of Section Officer at the time of filing that affidavit and was duly authorized by the Ministry to do so..

16.2 Averments made in para 16.2 need no comments, as these are statements of fact.

16.3 The answering respondent reiterates what has been stated in para 13 above.

10 additions

16.4 The allegation of the petitioner that records were not made available to the Commission is denied. In fact, in para 2.6 of its Report, the Commission itself has stated that out of 202 (two hundred and two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to the Commission.

11 ~~16.5~~ *Addition* It is submitted that all available records were produced before the Justice Mukherjee Commission. *and* As such, there seems to be no need to reappoint or reopen the JMCI.

12 ~~17.~~ *Addition* The answering respondent humbly submits that the earlier two Committee/Commission namely Shah Nawaz Committee and Khosla Commission have stated that Netaji Subhash Chandra Bose died in the plane crash at Taihoku Airport on 18th August, 1945. It is also humbly submitted that Government of India also accepted the finding of the said Committee/Commission.

13 ~~18 & 19.~~ *Addition that* The representation dated 11.3.2008 has not been received in the CDN Section of ~~the~~ *this* ~~18~~ Division of the Ministry of Home Affairs. In view of what has been stated in reply to 17 above, there is no need for reappointment or reopening of the Mukherjee Commission and the present petition may be dismissed. *Additions*

20. The answering respondent reiterates what has been stated in para 13 above.

21. The answering respondent reiterates what has been stated in para 13 above.

22. The answering respondent humbly reiterates that inspite of best efforts made by various organs of the Government, no records could be found on the basis of which the then Hon'ble Prime Minister of India late Morarji Desai made the statement on the floor of Parliament on 28th August, 1978.

23. The answering respondent reiterates what has been stated in para 13 above.

24. The answering respondent reiterates what has been stated in para 13 above.

Addition
15 25. The answering respondent submits that the Government of India has accepted the findings of the Shah Nawaz Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18th August, 1945.

16 26. The answering respondent reiterates what has been stated in para 13 above.

27. The answering respondent reiterates what has been stated in para 13 above.

Additions
16 A 28. The answering respondent denies that the fundamental rights of the petitioners guaranteed under section 14 & 19(1) of the Constitution of the India have ^{not} been violated. The answering respondent respectfully submits that the report of Justice Mukherjee Commission of Inquiry was thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinchng evidence'. It is submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral

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evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission's, therefore, does not conclusively disprove the plane crash ~~story~~ ^{Report} in the ~~face~~ ^{light} of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

16 B Addition
16 C Addition
29. The answering respondent has no comments to offer as it falls within the purview of Hon'ble Court.

30. The answering respondent has no comments to offer as it falls within the purview of Hon'ble Court.

17 addition
31. The answering respondent has no comments to offer as it falls within the purview of Hon'ble Court.

Prayers:-

It is submitted that the prayers as made by the petitioners may not be allowed as they are devoid of merit or substance.

Rt
Pl issue
ML
7/7/09

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251

No. 12014 / 6 / 08 – Cdn
Government of India
Ministry of Home Affairs
I S-II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 7th July, 2009.

7 JUN 2009
-7 JUL 2009

To,

By Speed Post

Smt S. Bhattacharya,
Additional Government Counsel,
Ministry of Law & Justice,
Branch Secretariat,
11, Strand Road, 2nd Floor,
Kolkata-700 001.

**Subject: W.P. No. 8215(W)/08 – Subash Chandra Basu & others vs
Union of India and others.**

The undersigned is directed to refer to this Ministry's letter of even number dated 2nd April, 2009 on the above mentioned subject and to request that the present position in the case may kindly be informed to the Ministry of Home Affairs. It is also requested that this Ministry may kindly be kept informed about the developments in the case from time to time.



Yours faithfully,

Amar Chand
(Amar Chand)

Under Secretary to the Government of India
Tele No. 246 10466

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252

No. 12014 / 6 / 08 – Cdn
Government of India
Ministry of Home Affairs
I S-II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.
Dated, the 21st July, 2009.

To,

By Speed Post

Smt S. Bhattacharya,
Additional Government Counsel,
Ministry of Law & Justice,
Branch Secretariat,
11, Strand Road, 2nd Floor,
Kolkata-700 001.

21 JUL 2009

**Subject: W.P. No. 8215(W)/08 – Subash Chandra Basu & others vs
Union of India and others.**

The undersigned is directed to refer to this Ministry's letter of even number dated 2nd April, 2009 and 7th July, 2009 on the above mentioned subject and to request that the present position in the case may kindly be informed to the Ministry of Home Affairs. It is also requested that this Ministry may kindly be kept informed about the developments in the case from time to time.



Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Government of India
Tele No. 246 10466

MEA

P.253/can

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23/6

4648/DS(L)/08
19/6/08



सत्यमेव जयते

237

विदेश मंत्रालय, नई दिल्ली
MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI

No. 25/4/NGO-XVI

June 11, 2008

To

Shri Amit Arora,
276, Captain Gaur Mall,
Srinivaspuri Depot,
Near Okhla Mandi,
New Delhi-110065.

Subject: Appeal under RTI Act 2005 of Shri Amit Arora.

Sir,

I am directed to refer to Ministry of Home Affairs letter No. 12014/6/08-
Cdn dated 9th May 2008 on the subject above. The reply to Point (ii) of your
query, which has been referred to Ministry of External Affairs, is as under:

- (ii) No decision has been taken on the question of bringing back the ashes of
Netaji Subhash Chander Bose to India.

Yours faithfully,

Sd/-

(Debnath Shaw)
Joint Secretary (CNV)
Tel. 23011357

✓ Copy to Shri S.K. Malhotra, Deputy Secretary/CPIO, Ministry of Home Affairs,
IS Division (Cdn.), 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-
110003.

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19/6

सत्यमेव जयते
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D. Shaw
(Debnath Shaw)



MOST IMMEDIATE

L.D. Ralte
Joint Secretary (CNV)
Tel: 2301 1357

D.O. No.25/105/NGO-Pt.

20 February 2007

Dear Shri Sarna,

Please refer your D.O.No.13013/9/06-CDN dated 29 December 2007 on the assurance to USQ 2817 dated 23.08.2006 by Dr. Brun Mukherjee regarding financial assistance to Renkoji Temple, Japan.

2 I am directed to inform that government has not sanctioned for payment to Renkoji Temple. It is possible that some individuals may have been made payments.

With best regards,

Yours sincerely,

Athlone

(L.D. Ralte)

Shri Vipin Saxena
Joint Secretary (Security)
Ministry of Home Affairs
Lok Nayak Bhawan
New Delhi - 11 00 03

DLI

XX Sc. (Arms)

Pl. keep up hope -
 Paul & Anne of Assurance Club

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2000

R.I.F.
Pl. 158
ML
26/10/09

By Speed Post
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No.12014/6/08-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division
Cdn. Section

25/1

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dated 26.10.09

27 OCT 2009

To


27 OCT 2009

Smt S. Bhattacharya,
Additional Government Counsel,
Ministry of Law & Justice,
Branch Secretariat,
11, Strand Road, 2nd Floor,
Kolkata-700 001.

**Subject: W.P.No.8215(W)/08 – Subhash Chandra Basu & others vs
Union of India and others.**

The undersigned is directed to refer to this Ministry's letter of even number dated 2nd April, 2009, 7th July, 2009 and 21st July 2009 on the above mentioned subject and to request that the present position in the case may kindly be informed to the Ministry of Home Affairs. It is also requested that this Ministry may kindly be kept informed about the developments in the case from time to time.

Yours faithfully,


(Baljeet Kaur Rekhi)
Section Officer

R.N. Das - Bar No. 5
226
Tarun Kumar Ghosh

Advocate
High Court, Calcutta

Bar Association
Room No. 2
High Court, Calcutta
Ph. Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
E-mail : barasohc@cal.cmc.net.in

10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

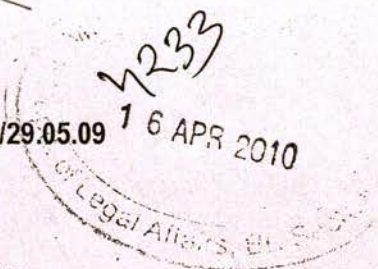
226
By hand
through special messenger

Dated 12th April 2010

To
The Senior Govt. Counsel,
Ministry of Law of Justice
Department of Legal Affairs,
11, Strand Road, Kolkata-700001.

Your Ref.: File No.: 592/Home/08-III dt. 22/29.05.09

Re.: : W.P.No. 8215 (W) of 2008
Subhas Chandra Bose
Vs.
Union of India & Ors.



(The pil matter is pending in the High Court, Calcutta for adjudication)

Dear Sir,

Kindly refer to my letter dated 22nd January, 2010 by which I brought to your notice about out come of hearing on 15.01.2010.

In this connection, I would like to place it on your record that the matter was listed in the peremptory list of cases dated 09.04.2010 of their Lordships the Hon'ble Justice Mr. Mohit S. Shah, Chief Justice and the Hon'ble Justice S.P. Talukdar and taken up for hearing. At the time of its hearing on 09.04.2010, I myself Ld. by the Ld. Senior Counsel Mr. R.N. Das appeared on your behalf.

The matter was heard at length. After hearing the Ld. Advocates for the parties their Lordships directed to be filed Affidavit-in-Opposition by 21.05.2010 instead of 12.02.2010 and the matter will be listed on 18.06.2010 for further hearing.

This is for your record and doing the needful.

Thanking you,

Hi Anup Mandal, put up file 16/4/10

Yours faithfully,

Tarun Kumar Ghosh
Tarun Kumar Ghosh
Advocate.
12.04.2010

RXT
Issued
15/2/10

Speed Post
207

257

No.12014/6/2008-Cdn.
Ministry of Home Affairs
IS-II Division

9th Floor, 'C' Wing, Lok Nayak
Bhavan, Khan Market, New
Delhi, dated the 14th July, 2010.

15 JUL 2010

To

Shri Mohd. Nizamuddin,
Advocate, High Court Calcutta,
Bar Association, Room No. 12,
And
15, Marquis Lane,
Kolkata-7000 16.

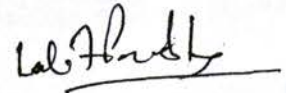
Subject: Petition No. 8215 (W) of 2008 – Subhash Chandra Basu Vs Union
of India

Sir,

Please refer to the discussion on 9.7.2010 at Kolkata. A set of the
Justice Mukherjee Commission Report (Vol. I, II-A and II-B) is sent herewith
as desired.

Please acknowledge the receipt.

Yours faithfully,



(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India

R & F
Issued
15-12-110

Speed Post
228

ज-1 क्रिया
ISSUED
15 JUL 2010
हस्ताक्षर/Intls.
प्रा. तथा नं. R&I/LNB
To

No.12014/6/2008-Cdn.
Ministry of Home Affairs
IS-II Division

258

9th Floor, 'C' Wing, Lok Nayak
Bhavan, Khan Market, New
Delhi, dated the 13th July, 2010.

15 JUL 2010

Shri T.K. Ghosh
Advocate, Bar Association,
Room No. 2, Calcutta High Court
Kolkata.

Subject: Petition No. 8215 (W) of 2008 – Subhash Chandra Basu Vs Union
of India

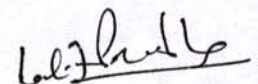
Sir,

I am directed to invite your attention to the copy of parawise comments on the above writ petition handed over to you by Sh. Amar Chand, Under Secretary, MHA on his visit to Kolkata on 14.5.2010 on the directions of Senior Counsel Shri R.N. Das. In this connection your letter dated 12.4.2010 addressed to Senior Govt. Counsel (Shri R.N. Das) on the subject refers.

2. I am also directed to say that Smt. S. Bhattacharya Addl. Govt. Advocate/ Incharge, Branch Sectt., Kolkata has also discussed this matter with you on 9.7.2010 and directed to finalize the affidavit in consultation with Additional Solicitor General, Sh. Farooq Razak. The same may be done within this week to enable the undersigned to obtain the approval of higher authorities before it is got affirmed by the Oath Commissioner, Delhi High Court.

3. An urgent action is requested.

Yours faithfully,



(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India

→

Copy to:

518

15 JUL 2010

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1. ✓ Additional Solicitor General, Sh. Farooq M. Razak, 19, Balu Hakak Lane, Park Circus, Kolkata- 700017.
2. ✓ Smt. S. Bhattacharya, Additional Advocate/Incharge, Deptt. Of Legal Affairs, Branch Sectt., 11 Stand Road, 2nd Floor, Kolkata- 700001 w.r.t. the discussions with her on 9.7.2010 at Kolkata.
3. ✓ Shri R.N. Das, Senior Govt. Council, High Court Kolkata with reference to his discussions with Sh. Amar Chand, Under Secretary, MHA on 14.5.2010.

No.I/ 12014/5/2007-Cdn.
Ministry of Home Affairs
Internal Security Division
Cdn. Section

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 13th July 2010.

OFFICE MEMORANDUM

Sub: WP No. 2003/2006-Shri Rudra Jyoti Bhattacharya-Vs.-Union of
India & Ors.

The undersigned is directed to refer to your letter No. RS.40/2008-T dated 21.08.2008 providing information on the action taken report in the regard to the report laid on the Table of the House in respect of Justice Mukherjee Commission of Inquiry (JMCI). In order to prepare the necessary affidavit, the Additional Solicitor General, Kolkata High Court has desired full text of the debate held in the Rajya Sabha.

2. It is requested that a copy of the full text of the full debates on Justice Mukherjee Commission of Inquiry (JMCI) that took place on different dates may be provided to this Ministry immediately latest by 15.07.2010.

L.P. Shrivastava

(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India
Tel. 24610467

Shri K. Sudhakaran
Deputy Director
Rajya Sabha Secretariate
Parliament House, New Delhi.

P.B. No. 5/10
15/7/10

No.I/ 12014/5/2007-Cdn.
Ministry of Home Affairs
Internal Security Division
Cdn. Section

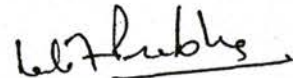
9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 13th July, 2010.

OFFICE MEMORANDUM

Sub: WP No. 2003/2006-Shri Rudra Jyoti Bhattacharya-Vs.-Union of India & Ors.

The undersigned is directed to refer to your letter No. 23/5/XIV/2008/T dated 12.02.2010 providing information on the action taken report in the matter of report laid on the Table of the House in respect of Justice Mukherjee Commission of Inquiry (JMCI). In order to prepare the necessary affidavit by the Assistant Solicitor General, Kolkata High Court has desired full text of the debate held in the Rajya Sabha.

2. It is requested that a copy of the full text of the full debates on Justice Mukherjee Commission of Inquiry (JMCI) that took place on different dates may be provided to this Ministry immediately latest by 15.07.2010.



(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India
Tel. 24610467

**Shri S.K.Ganguly,
Under Secretary
Lok Sabha Secretariat,
Parliament House, New Delhi.**

P.B. No. 5 / 10
15/7/10

No.I/ 12014/5/2007-Cdn.
Ministry of Home Affairs
Internal Security Division
Cdn. Section

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 14th July, 2010.

OFFICE MEMORANDUM

Sub: WP No. 2003/2006-Shri Rudra Jyoti Bhattacharya-Vs.-Union of
India & Ors.

Apropos our telephonic discussion today in regard to information on the action taken report in the regard to the report laid on the Table of the House in respect of Justice Mukherjee Commission of Inquiry (JMCI). In order to prepare the necessary affidavit, the Addional Solicitor General, Kolkata High Court has desired full text of the debate held in the Rajya Sabha.

2. It is requested that a copy of the full text of the full debates on Justice Mukherjee Commission of Inquiry (JMCI) that took place on different dates may be provided to this Ministry immediately latest by 15.07.2010.

L.P. Shrivastava

(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India
Tel. 24610467

**Shri Raghav Dass,
Director,
Room No. 632,
Parliament House Annexe,
New Delhi.**

P.B.S / 10
15/7/10

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MOST IMMEDIATE/BY SPEED POST

No. 592/Home/2008/Lit.III /2053/3248
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat

11, Strand Road,
2nd Floor (Middle Building),
Kolkata-700 001.

Dated, the 3rd Sept., 2010.

To
 Ms. Baljeet Kaur Rekhi,
 Section Officer,
 Ministry of Home Affairs,
 IS-II Division, Cdn Section,
 Lok Nayak Bhavan,
 9th Floor, C-Wing, Room No.8,
 New Delhi.

Sub : W.P. No, 8215 (W) of 2008 –
Subhas Chandra Bose
-Vs-
Union of India & Ors.

Sir,

Please note that the above PIL matter came up before the Hon'ble the Chief Justice, the Hon'ble Justice Jainarayan Patel and the Hon'ble Justice Bhattacharyya on 20.08.2010, when the Learned Additional Solicitor General, Mr. Farook M. Razack and Shri Tarun Kumar Ghosh, Advocate, appeared on behalf of the Union of India. After hearing Their Lordships were please to direct the Union of India to file Affidavit-in-Opposition on or before the next date of haring as fixed on 10.09.2010.

You are, therefore, requested to take immediate necessary action for filing the Affidavit-in-Opposition since the matter is important one.

Yours faithfully,

Received today
at 3.05 p.m.
(B) Bhi
10/9/10

SS 3/9/10.
(S. Bhattacharyya)
Sr. Central Govt. Advocate & In charge

By Speed Post

284

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No.12014/5/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 1st September, 2010.

01 SEP 2010



To

Shri Farooq M. Razak,
Additional Solicitor General Kolkata,
19, Balu Hakak Lane,
Park Circus,
Kolkata- 700 017

Sub: WP No. 2003/2006- Shri Rudra Jyoti Bhattacharya Vs. Union of India & Ors.

Sir,

I am directed to refer to the above mentioned subject and to request that the present position of the case may kindly be arranged to be conveyed immediately.

Yours faithfully,

(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India
Tel: 24610467

o/c

RJI
Please
issue
Bhattacharya
11/9/10



285
205-
BY SPEED POST

No.I/ 12014/5/2007-Cdn.
Ministry of Home Affairs
Internal Security Division-II

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 23rd September, 2010.

To

Ms. S. Bhattacharya
Joint Secretary & Legal Adviser,
Ministry of Law and Justice,
Deptt. Of Legal Affairs,
11 Strand Road, Kolkata-700001

22 SEP 2010

Subject: W.P. No. 8215(W)/08 filed by Shri Subash Chadra Basu & others
Vs. UOI & others

Madam,

I am directed to refer to your letter No. 592/Home/2008/Lit.III/2053/3248 dated 3.9.2010 on the above subject and to convey that a copy of parawise comments of this Ministry on the writ petition has been sent to you vide this Ministry's letter of even number dated 2.04.2009 followed by reminders.

During the visit of undersigned alongwith Smt. L.P. Shrivastava, Under Secretary to Kolkatta on 9th July, 2010, we had met yourself and drawn your attention to the above fact. It was also mentioned that a copy of parawise comments were handed over to Shri Ghosh on 10.5.2010 by Shri Amar Chand, Under Secretary. Yourself had assured that Shri T.K.Ghosh would be asked to prepare affidavit and directed him to send the same to the Ministry which could be typed on green sheet and affirmed by the Oath Commissioner and for that purpose, Under Secretary need not visit Kolkatta again. The necessary affidavit in W.P. No. 8215(W)/08 has not been received as yet.

Attention is invited to this Ministry letter of even number dated 15.7.2010 addressed to Shri T.K.Ghosh, Advocate appointed in this case with a copy to you for information (Copy enclosed). It is requested to get the affidavit prepared on the

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bases of parawise comments furnished by the Ministry in order to get it affirmed by the Oath Commissioner as suggested by you.

Yours faithfully,

(B.K. Rekhi)

(B.K. Rekhi)

Section Officer

22.09.2010

*ASI may
be issue endorsement
as mentioned below
Gh
23/9/10*

Copy to :

SLP

23 SEP 2010

Shri Farooq M. Razak, Additional Solicitor General, Kolkata. A copy of parawise comments of this Ministry were also handed over to the ASG during the visit to Kolkata on 8.07.2010.

*(19, Balu Hachhak Lane, Park Circus,
Kolkata - 700 017)*



282

267

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Chief Justice: Jain
In 12th June 10

W.P.No.2003 of 2006
Rudra Jyoti Bhattacharjee & Ors.

B

Versus
Union of India & Ors.

With
W.P.27541(W) of 2006

13th June

Ashim Kumar Ganguly & Anr.

Versus
Union of India & Ors.

And
W.P.8215(W) of 2008

Subhas Chandra Bose

Versus

Union of India & Ors.

Law Ministry
Counsel Bo
17th July

For petitioners
(in Serial No.1)

: Mr. Kashi Kanta Moitra, Sr.Advocate with
Mr. Kesab Bhattacharya and
Ms. Debjani Ghosal, Advocates

For petitioners
(in Serial No.2)

: Mr. Ashim Kumar Ganguly, Advocate

For petitioners
(in Serial No.3)

Mr. Subhas Chandra Bose, Advocate

For Respondent/IOI :

Mr. F.M.Razack, Addl.Solicitor General with
Mr. R.N.Das, Sr.Advocate and
Md. Nizamuddin, Advocates

09433506066 Mr. Tamara Chak

BEFORE:

The Hon'ble the CHIEF JUSTICE

AND

The Hon'ble JUSTICE BHATTACHARYA

Date : 10th September, 2010.

THE COURT : Let the supplementary affidavit filed on behalf of the petitioners Rudra Jyoti Bhattacharjee & Ors. in W.P. 2003 of 2006 as well as the supplementary affidavit filed on behalf of Ashim Kumar Ganguly & Anr. In W.P.No.27541(W) of 2006 be taken on record.

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Learned Additional Solicitor General has placed before us a communication dated 6th September, 2010 addressed to him by the Ministry of Home Affairs, Government of India, along with a Fax message dated 3rd September, 2010 wherein the Ministry of Home Affairs has specifically denied having given any clearance in respect of the matter raised in the news item which appeared in the Pune Times on 18th August, 2010. It is also submitted that the facts have also been ascertained by the Ministry of External Affairs from their Mission in Tokyo who have conveyed that the article is farfetched and not based on facts. Let the communication dated 6th September, 2010 along with the Fax message dated 3rd September, 2010 be taken on record.

Learned Additional Solicitor General submits that he would like to file Affidavit in opposition in reply to the two supplementary affidavits filed in Court today. He would also like to seek further information in respect of the petitions so that he may be able to assist the Court for which some time may be granted.

We make it clear that the learned counsel for the parties should be ready with their respective cases so that all the three petitions can be finally heard and disposed of. By consent of learned counsel for the parties, all the three petitions are directed to be listed on 19th November, 2010 at 2.00 p.m. for final hearing. Parties are expected to complete their pleadings and tender synopsis of the case, if any, in advance.

Certified photostat copy of this order be made available to the parties by Tuesday next. (14-9-2010).

(J.N.PATEL, C.J.)

(BHATTACHARYA, J.)

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सत्यमेव जयते

FAROOK M. RAZACK

अपर महा-सॉलिसिटर
भारतADDITIONAL SOLICITOR-GENERAL
OF INDIA12th November 2010

Dear Shri Muralidharan,

330955(15-11)9
16.XI.X

Re: W. P. No. 2003 of 2006

Rudrajyoti Bhattacharya & Ors. vs. Union of India & Ors.

With

W. P. No. 27541 (W) of 2006

Ashim Kumar Ganguly & Anr. vs. Union of India & Ors.

With

W. P. No. 8215 (W) of 2008

Subhash Chandra Bose vs. Union of India & Ors.

The aforesaid matters are coming up for hearing before the learned Division Bench of the Hon'ble High Court at Calcutta on 19th November 2010. On the last occasion i.e., on 10th September 2010, the matter was heard out at length. The issue raised by the learned Counsel appearing for the petitioners was relating to a publication made by Pune Times, a Pune based newspaper on 18th August 2010 wherein it had been stated that some activists have obtained permission from the Central Government to bring the ashes of Netaji Subhash Chandra Bose kept in the Renkoji Temple at Japan to India. It was submitted by me that neither the Ministry of Home Affairs nor the Ministry of External Affairs had given any clearance in respect of the matter raised in the news item, which appeared in Pune Times on 18th August 2010. A communication dated 6th September 2010 issued by the Ministry of Home Affairs in this regard which had been received by me was submitted before the Hon'ble Court. At this juncture two supplementary affidavits were filed by the petitioners regarding these facts and the same was taken on record. Prayer was made by me for leave to file an affidavit-in-opposition to the supplementary affidavits filed in Court. Leave was granted and the matter has been fixed for final hearing on 19th November 2010 at 2.00 PM.

See Discarded
with DSLs
DSLs Mr.
16/11/10



सत्यमेव जयते

FAROOK M. RAZACK

अपर महा-सॉलिसिटर

भारत

ADDITIONAL SOLICITOR-GENERAL
OF INDIA

On earlier occasion, when the matter had been heard certain queries were raised by the Hon'ble Court which had been communicated to Shri Amarchand, Under Secretary, Government of India, Ministry of Home Affairs when he had visited me at my Chamber. However, I have not received any reply in respect thereof. The said queries have also been informed to you verbally over the phone. I once again highlight the said queries raised by the Hon'ble Court hereinbelow for your instructions:

1. The Action Taken Report pursuant to the filing of Justice Mukherjee Commissions Report, interms whereof, the Government has not accepted the findings of Justice Mukherjee Commission does not disclose any reasons. Therefore, as no reasons have been disclosed the said Action Taken Report is bad in law. Accordingly, I was asked by the Hon'ble Court to apprise them whether any reasons were given by the Central Government for rejection of Justice Mukherjee Commission's finding.
2. Whether there are any documents supporting or negating the statement made by Shri Morarji Desai, the then Prime Minister of India in Parliament on 28th August 1978 which is highlighted at page 14 of the Justice Mukherjee Commission Report Volume 1?
3. Whether Shri Tarakeshwar Pal, learned Counsel appearing for the Government of India had been briefed by the Central Government to represent the Union of India before the Justice Mukherjee Commission and whether he represented the Central Government in the said capacity and advanced arguments on its behalf? (Note: There is lot of controversy regarding this fact because at page 36 of Justice Commission Report Volume 1, it has been stated that Shri Tarakeshwar Pal, learned Counsel appearing for the Government of India had made submissions)

Your instructions on the aforesaid queries is very essential and the same may, therefore, be immediately communicated to me.



सत्यमेव जयते

FAROOK M. RAZACK

अपर महा-सॉलिसिटर 271

भारत

ADDITIONAL SOLICITOR-GENERAL
OF INDIA

Besides, kindly let me know whether there is any document or Rule or any statutory provision which provides that decisions taken by full Cabinet cannot be disclosed before a Court of Law. This is required because I was told by Shri Amarchand, Under Secretary that the Action Taken Report whereby the findings of Justice Mukherjee Commission was not accepted was the decision of the full Cabinet.

I have not yet received the affidavit-in-opposition drafted by the junior Counsel in answer to the supplementary affidavits filed by the writ petitioners on 10th September 2010. I am instructing the learned Advocate concerned to prepare the same immediately, if he has not done it so far, so that the same maybe affirmed before the date of the hearing and filed in Court.

As the final hearing is likely to take place on 19th November 2010, I would request you to come down to Kolkata on Thursday the 18th November 2010 so that necessary instructions may be obtained relating to the cases in question.

With warm regards,

Yours sincerely,

(FAROOK M. RAZACK)

Shri K. Muralidharan,
The Deputy Secretary (Security),
Government of India,
Ministry of Home Affairs,
New Delhi

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

WP No. 2003 of 2006
RUDRA JYOTI BHATTACHARJEE & ORS
Versus
UNION OF INDIA
With
W.P.27541(W) of 2006
Ashim Kumar Ganguly & Anr.
Versus
Union of India
And
W.P.8215(W) of 2008
Subhas Chandra Bose
Versus
Union of India & Anr.

For Petitioners	Mr. Kashi Kanti Moitra, Sr. Advocate
(in Serial No.1)	Mr. Debabrata Kole, Advocates
For petitioner	Mr. Ashim Kumar Ganguly, Advocate
(in Serial No.2)	
For petitioners	Mr. Subhas Chandra Bose, Advocate
(in Serial No.3)	
For Resopondent/UOI	Mr. Farook M. Razack, Addl. Solicitor with
	Mr. Tarun Kr. Ghosh and
	Md. Nizzamuddin, Advocates

BEFORE:

The Hon'ble the CHIEF JUSTICE
AND
The Hon'ble JUSTICE BHATTACHARYA

Date : 20th August, 2010.

THE COURT : Learned counsel for the petitioner has drawn our attention
to a news item obtained from the website of Times of India, EG Image and the news report

is through Times News Network. A copy of the same is tendered which is taken on record and marked 'X' for identification.

The first two paragraphs of the said news item reads as under :

"Pune : City-based World Peace Centre (WPC) will bring the ashes of freedom fighter and Azaad Hind Sena founder Subhas Chandra Bose, who sought Japan's assistance for India's freedom movement during World War II, to Pune by the next Independence Day.

The centre has received clearance from the Union Government through Indo-Japan association and the ashes that are currently in Tokyo's Netaji Subhas Chandra Memorial will be handed over to the WPC by the next Independence Day."

.....

Learned counsel submits that he will place this news item on record along with an affidavit to be filed on behalf of the petitioner and copy of the same would be furnished to the learned Additional Solicitor General and counsel appearing for the State Government. It is submitted that the Commission has come to a clear finding by observing that the ashes kept in the Japanese Temple is not that of Netaji. It is also submitted that the fact that the N.G.O. World Peace Centre claims to have received clearance from the Union Government through Indo-Japanese Association for performing the last rituals of Netaji next year is a matter of great concern. Such steps on the part of the Union Government is not proper, particularly when the matter is under consideration of this Court on the Judicial side. Learned counsel submits that this Court should take up the matter for hearing by fixing a suitable date so that some progress is made considering the fact that the matter has been pending since long.

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Learned Additional Solicitor General states that he will seek instructions in the matter and make statement on the next date.

On the last date, we had requested the counsel for the parties to sit together and propose the issues on which they will address the Court so that we can proceed to hear the matter. Nothing could be worked out and, therefore, it will be proper that the matter be listed for hearing. We, therefore, direct the learned counsel for the parties to complete their pleadings and, particularly, the respondent Union of India to file their affidavit-in-opposition on or before 3rd September 2010.

List this matter for hearing on 10th September 2010 at 2.00 p.m.

Certified photostat copy of this order be made available to the parties upon compliance of usual formalities.

(J.N.PATEL, C.J.)

(BHATTACHARYA, J.)

Rsg.
Asst.Registrar(CR)

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By Speed Post

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No. 12014/5/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 24th November, 2010.

R & I to Issue

Ruchika

24/11/2010.

To

Shri Farooq M. Razak,
Additional Solicitor General Kolkata,
19, Balu Hakak Lane,
Park Circus,
Kolkata- 700 017

25 NOV 2010

Sub: (i) 2003/2006 Rudra Jyoti Bhattacharya Vs. Union of India & Ors

(ii) 27541 of 2006 – Ashim Kumar Ganguly & Ors Vs. Union of India & Others

(iii) WP No. 8215(W)/08 - Subhash Chandra Basu & Ors Vs. Union of India & Ors.

Sir,

This letter is in pursuance of the discussions & briefing held with you in Kolkata in your Chamber and the hearing which took place before the Court of Chief Justice on 19th November, 2010 at 2.00 P.M. It had been mentioned by the Advocate of the Petitioners that the Counter Affidavit had not been filed in the Writ Petition No. 8215(W) of 2008- Subhash Chandra Basu & Ors Vs. Union of India & Ors. The Hon'ble Court had directed that the Union Government should file the affidavit on this petition and final hearing will now take place on 13th January, 2011.

2. In this connection it may be conveyed that a copy of the parawise comments had been sent to Smt. S. Bhattacharya, Ministry of Law, Kolkata Branch on 2.4.2009 and reminders had also been sent to her for forwarding the draft affidavit to Ministry of Home Affairs but the same have not yet been received in spite of repeated reminders. A copy of the parawise comments had also been handed over personally to Shri T.K. Ghosh. Government Advocate on 14.5.2010 by Shri Amar Chand, Under Secretary, MHA, when he was in

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Kolkata. A copy of the prawise comments had also been handed over to you by Smt.L.P. Shrivastava, US, MHA and Smt. B.K.Rekhi, Section Officer, MHA during their visit to Kolkata on 08.7.2010. They had also apprised Smt. S. Bhattacharya of the fact that the Ministry had not received the draft affidavit till then whereas a copy of the parawise comments had been sent to her on 2.4.2009. She had spoken to Shri T.K. Ghosh and directed him to prepare the draft affidavit and sent to the Ministry. She had directed Smt. L.P. Shrivastava that the affidavit so received may be got affirmed before the Oath Commissioner, High Court of Delhi and sent to them along with 4 copies thereof for filing, but the same has not been received as yet. A copy of letter dated 13th July, 2010 written to Shri Ghosh in this regard is enclosed. Also a copy of letter dated 22nd September, 2010 written to Smt. S. Bhattacharya is also enclosed for information.

3. In view of the above position, it is requested that you may kindly personally look into the matter and also request you to coordinate the case personally with all the concerned Government Advocates and arrange to send the draft affidavit to this Ministry at the earliest i.e. by 8th December, 2010.

Yours faithfully,

Encls: As above

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel: 24617196

Copy to:

Smt. S. Bhattacharya, Senior Central Government Advocate and
Incharge, Branch Secretariat, Kolkata

25 NOV 2010

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277
206

BY SPEED POST

No.I/ 12014/5/2007-Cdn.
Ministry of Home Affairs
Internal Security Division-II

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 23rd September, 2010.



To

Ms. S. Bhattacharya
Joint Secretary & Legal Adviser,
Ministry of Law and Justice,
Deptt. Of Legal Affairs,
11 Strand Road, Kolkata-700001

22 SEP 2010

Subject: W.P. No. 8215(W)/08 filed by Shri Subash Chadra Basu & others
Vs. UOI & others

Madam,

I am directed to refer to your letter No. 592/Home/2008/Lit.III/2053/3248 dated 3.9.2010 on the above subject and to convey that a copy of parawise comments of this Ministry on the writ petition has been sent to you vide this Ministry's letter of even number dated 2.04.2009 followed by reminders.

During the visit of undersigned alongwith Smt. L.P. Shrivastava, Under Secretary to Kolkatta on 9th July, 2010, we had met yourself and drawn your attention to the above fact. It was also mentioned that a copy of parawise comments were handed over to Shri Ghosh on 10.5.2010 by Shri Amar Chand, Under Secretary. Yourself had assured that Shri T.K.Ghosh would be asked to prepare affidavit and directed him to send the same to the Ministry which could be typed on green sheet and affirmed by the Oath Commissioner and for that purpose, Under Secretary need not visit Kolkatta again. The necessary affidavit in W.P. No. 8215(W)/08 has not been received as yet.

Attention is invited to this Ministry letter of even number dated 15.7.2010 addressed to Shri T.K.Ghosh, Advocate appointed in this case with a copy to you for information (Copy enclosed). It is requested to get the affidavit prepared on the

bases of parawise comments furnished by the Ministry in order to get it affirmed by the Oath Commissioner as suggested by you.

Yours faithfully,

(B.K.Rekhi)

Section Officer

22.09.2010

*ASI may
be issue endorsement
as mentioned below
23/9/10*

Copy to :

SLP

23 SEP 2010

Shri Farooq M. Razak, Additional Solicitor General, Kolkata. A copy of parawise comments of this Ministry were also handed over to the ASG during the visit to Kolkata on 8.07.2010.

*(19, Balu Hachhak Lane, Park Circus,
Kolkata - 700 017)*



Speed Post

9th Floor, 'C' Wing, Lok Nayak
Bhavan, Khan Market, New
Delhi, dated the 13th July, 2010.

15 JUL 2010

Subject: Petition No. 8215 (W) of 2008 – Subhash Chandra Basu Vs Union of India

I am directed to invite your attention to the copy of parawise comments on the above writ petition handed over to you by Sh. Amar Chand, Under Secretary, MHA on his visit to Kolkata on 14.5.2010 on the directions of Senior Counsel Shri R.N. Das. In this connection your letter dated 12.4.2010 addressed to Senior Govt. Counsel (Shri R.N. Das) on the subject refers.

3. An urgent action is requested.

Lab. 7

(Smt. L.P. Shrivastava)
Under Secretary to the Govt. of India

300

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~~251~~

15 JUL 2010

Copy to:

SIR

- ✓ 1. Additional Solicitor General, Sh. Farooq M. Razak, 19, Balu Hakak Lane, Park Circus, Kolkata- 700017.
- ✓ 2. Smt. S. Bhattacharya, Additional Advocate/Incharge, Deptt. Of Legal Affairs, Branch Sectt., 11 Stand Road, 2nd Floor, Kolkata- 700001 w.r.t. the discussions with her on 9.7.2010 at Kolkata.
- ✓ 3. Shri R.N. Das, Senior Govt. Council, High Court Kolkata with reference to his discussions with Sh. Amar Chand, Under Secretary, MHA on 14.5.2010.

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No.12014/5/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 26th November, 2010

Office Memorandum

**Sub: WP No. 2003 of 2006- Shri Rudra Jyoti Bhattacharya & Ors Vs.
Union of India & Ors.**

The undersigned is directed to say that the above mentioned Court case is coming up for hearing on 13th January, 2011.

2. This Ministry contacted Shri Farooq M. Razak, Additional Solicitor General Kolkata, in the Writ Petition No.2003/2006 – Rudra Jyoti Bhattacharya & Ors. Vs Union of India. He has desired to furnish a copy of the discussion that took place on 28th August, 1978, regarding the reply given by the then Prime Minister Shri Morarji Desai in the Lok Sabha in connection with the reports of Shahnawaj Committee and the Khosla Commission on the issue of disappearance of Netaji Subash Chandra Bose.

3. It is requested to furnish a copy of the discussion that took place on 28th August, 1978 immediately. The matter is to be discussed with ASG, Kolkata High Court.

L.P. Shrivastava

(Smt. L.P. Shrivastava)

Under Secretary to the Govt. of India

Tel: 24610467

Shri Raghav Dass,
Director,
Room No. 632,
Parliament House Annexe,
New Delhi.

Issued vide

NCB PB 10/10

Ruchika

26/11/2010.

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/2381/4259

F.No.592/Home/08/III.
GOVERNMENT OF INDIA
Ministry of Law & Justice
Deptt. of Legal Affairs
11, Strand Road
Kolkata

Date: 3.11.2010

FAX No.22311646
Tel. No.22484806

To
Mr. Tarun Kumar Ghosh
Advocate
Bar Association, Room No.2
High Court, Calcutta.

Sub : W.P.No.8215(W) of 2008
Sri Subhash Chandra Basu & Anr.
-Vs-
Union of India & Ors.

Sir,

Please refer to this office letter dated 8.4.09 sent to you along with parawise comments of the Ministry of Home Affairs for drawing affidavit-in-opposition. Department concerned vide their letter dated 23.09.10 inform this office that parawise comments were handed over to you on 10.5.10 by Shri Amar Chand, Under Secretary of the department concerned but affidavit in W.P. No.8215(W) of 08 has not been received by the department concerned. I am directed to request you to inform this office about the reasons for delay in preparing affidavit-in-opposition. You are requested to draw the A/O immediately and send it to the department concerned after settling from the Sr. Counsel and Ld. A.S.G. for further necessary action.

This is for your information and necessary action.

Yours faithfully,

(G.S.Makker)
Jr. Central Govt. Advocate.

Copy to :

Mr. B.K. Rekhi, Section Officer , Ministry of Home Affairs, Internal Security Division-II, 9th floor, "C" Wing, Lok Nayak Bhawan, New Delhi - for information.

(Jr. C.G.A.)

Received
Today
USC/NSA
in Date please
B.K. Rekhi
7/12/10

Seen
Thanks.
Process only.
7/12/10
so (cdn)

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282

By Speed Post

No. 592/Home/08-III / 4407
Government of India
Ministry of Law & Justice,
Department of Legal Affairs
11, Strand Road,
Kolkata-1.

FAX: 2228-5215
Tel: 2248-4806

Dated, the 19th Nov., 2010

To
✓ Mr. B.K. Rekhi,
Section Officer,
Ministry of Home Affairs,
Internal Security Division-II,
9th Floor, C-Wing,
Lok Nayak Bhawan,
New Delhi-110 003.

Sub : W.P. No.8215(W) of 2008
Sri Subhas Chandra Basu & Anr.
-Vs-
Union of India & Ors.

Sir,

Enclosed please find herewith draft Affidavit-in-Opposition in the aforesaid matter drafted by Shri Tarun Ghosh, Advocate and settled by Shri Farook M. Razack, Learned Additional Solicitor General, High Court, Calcutta, for your kind approval and final typing.

You are requested to send approved final typed Affidavit-in-Opposition with sufficient number of copies in consultation with concerned drafting counsel for further necessary action.

Yours faithfully,

(G.S. Makker)

Jr. Central Govt. Advocate

Recd
15.7.2010

ASQ 1246 of 2010,

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

Settled with
modifications-
kindly go through
the corrections
carefully and only
after checking the
re-typed copy
affix the Affidavit.
19/7/10

W.P. NO.8215 (W) OF 2008.

IN THE MATTER OF :

An application under Article 226 of the
Constitution of India;

-And-

IN THE MATTER OF :

A writ or writs in the nature of
Mandamus;

-And-

IN THE MATTER OF :

A writ or writs in the nature of
Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of
Mukherjee Commission for

completion of Inquiry into the matter of alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945 and/or continue further enquiry to find out the date of death of Netaji Subhas Chandra Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2.(d) - Whether he has died in any other manner at any other place and, if so, when and how," of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

IN THE MATTER OF :

The Evidence Act, 1872;

-And-

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights
enshrined under Article 14, 19(1) of the
Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

IN THE MATTER OF :

Non-Consideration of the representative
dated 11.03.2008 sent by the petitioner
to the concerned authorities;

-And-

IN THE MATTER OF :

1. SRI SUBHASH CHANDRA
BASU, Son of Late Surendra Nath Basu,

residing at 86, Sadar Boxi Lane, Post Office, Police Station and District - Howrah, Pin - 711101;

2. **SRI PANKAJ HALDER,**

son of Sri Late Arabinda Halder, residing at Village - Mathurapur, Post Office and Police Station - Mathurapur, District - South 24-Parganas.

... PETITIONERS.

-Versus-

1. **UNION OF INDIA,**

service through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi - 110001;

2. **PRINCIPAL SECRETARY,**

Government of India Office of Prime Minister at 7, Race Course Road, New Delhi - 110003;

3. SECRETARY,

Ministry of Foreign Affairs, Government
of India, South Block, New Delhi -
110001.

4. SECRETARY,

Ministry of Parliament Affairs,
Government of India, New Delhi-
110001.

..... RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF
THE RESPONDENTS HEREIN ABOVE.

I, Naresh Jaiswal, son of _____, aged about 46 years, by
occupation - Service under Government of India and presently posted in its
office in New Delhi, residing at No.111-P, Type-III Quarters, Aram Bag,
Paharganj, New Delhi - 110055, do hereby solemnly affirm and say as follows :

1. I am one of the principal officer of the respondents as such I am competent
to swear this affidavit. I know the facts and circumstances of the case as ^{are} available ^{from}
relevant records lying in the office. I have also been authorized to affirm this
affidavit on behalf of all the respondents and am otherwise competent to depose
to the same.

2. I have read a copy of the writ petition affirmed by the petitioners and filed in the Hon'ble High Court under Article 226 of the Constitution of India and have understood the contents of the same.

3. Before dealing with all paragraphs of the said writ petition, at the outset, I state that the instant petition is not maintainable under Article 226 of the Constitution of India.

3A. With reference to the ~~statements~~ *averments made* in paragraph No 12, I say that the *petitioners are* *

5- With regard to the statement made in paragraphs ~~2, 4, 5, 6, 8, 9, 10, 11,~~ ^{2, 6}

~~12, 12.1, 14, 14.1, 14.2, 16, 16.2, 16.3, 20, 21, 23, 24, 26, 27, 29, 30, 31~~ of the writ

petition, I state that those are matters of record ~~are admitted and deny those~~ *and save and except*

~~which contrary to and inconsistent with the said records.~~ *what appears from the records all allegations contrary*

~~thereto or inconsistent therewith are emphatically~~ *denied and disputed by me.*

6- With regard to the statement made in paragraph 3 of the writ petition I state that :

- (i) The disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the very beginning. The Government of India has, so far, appointed three Committee/ Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku,

*indeed
* Learned
Advocates
practising
in this
Hon'ble
Court.
However,
the rest of
the averments
made in
the paragraph
under reply
are matters
of record relating to a writ petition filed before the
Hon'ble Apex Court and the latter matters filed before this Hon'ble Court
and save
what appears
from the records
of the said
cases, I do
not admit
anything.
I further say
that the
petitioners are.*

Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report. The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

learned Division Bench of this

(ii) Subsequently, a writ petition was filed before the ~~Kolkata High~~ *Hon'ble* ~~Court, and a Division Bench by its judgement dated 30th April, 1998~~ *After hearing the learned counsel appearing for the parties this Hon'ble Court its order/judgment dated 30-4-1998*

Court directed the Union of India to re-inquire into the alleged disappearance of *Subhas Chandra Bose* Netaji in accordance with law by appointing a Commission of Inquiry.

This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose. Therefore, the Government of India appointed a Commission headed by Justice M. K. Mukherjee *(since retired)* into all the facts and circumstances related to the disappearance of Netaji Subhash

Chandra Bose in 1945 and subsequent developments connected therewith, including :-

- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is dead, whether he died in the plane crash, as alleged;
- (c) Whether the ashes in the Japanese temple are ashes of Netaji;
- (d) Whether he has died in any other manner at any other place and, if so, when and how;
- (e) If he is alive, in respect of his whereabouts.

(iii) Justice Mukherjee Commission of Inquiry, (JMCI), submitted its report on 8th November, 2005 with the following findings :

Sl. No.	Terms of reference	Conclusion of the Commission
A.	Whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	If he is dead, whether he died in the plane crash, as alleged;	He did not die in the plane crash, as alleged;
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under :

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon its above findings - that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged."

(iv) The report of the JMCI was thoroughly examined. It was found that the Commission's inquiry was inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of "clinching evidence". Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of JMCI, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where

he was treated to third degree burn injuries sustained in the plane crash.

The Government of India did not accept the conclusions of JMCI.

(v) The report of the JMCI was placed before both the Houses of Parliament along with the ATR on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows :

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :

- (a) Netaji did not die in the plane crash; and
- (b) The ashes in the Renkoji Temple were not of Netaji.

☞ The report is placed before the Houses as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956".

(vi) It would be seen that the Government has accepted the majority reports of the Committee/Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect.

Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission along with the ART has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

6. With regard to the statement in paragraph 7 of the writ petition, I state that respondents want to say that on recommendations of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. ~~the~~ ^A press communiqué announcing the conferment of award was issued by the President's Secretariat on January 22, 1992. In the case of posthumous awards, the award has to be received by the next of kin (NOK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was ~~contacted~~ ^{contacted} in this connection, expressed certain reservations on receiving the award as according to her such an honour should have been appropriate in the fifties and ~~left~~ ^{said} that one cannot honour Netaji today by

awarding the Bharat Ratna to him. She declined to receive the award. Apart from declining of the award by Netaji's daughter, some persons submitted a memorandum to the then President. There was also criticism in Parliament and the media about the award. The crux and essence of all this was that the award was too late in the day for Netaji and also on the ground that it was not appropriate for the Government to announce the award 'posthumously' in the absence of credible evidence of Netaji's death. However, it was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award ^{is} actually conferred by the President during the presentation ceremony. Since the award was declined by the NOK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.

6A - *While reference to the ~~other~~ ^{and 12-1} allegations made in paragraphs 8, 9, 10, 11, ~~and~~ 12 of the writ petition I say that the same are matters of record and save what appears from the records I do not admit anything.*

7. With regard to the statement in paragraph 13 of the writ petition, I ~~state~~ ^{deny} that the Central Government had rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.05.2006 without assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commissioner's finding

that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is further submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they also relied on oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission, therefore, does not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission and

accept the conclusions of ~~the~~ Justice Mukherjee Commission of Inquiry. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 provides that the report of the Commission also with the ATR has to be placed before Parliament so that Parliament can taken necessary action in the matter as it may be advised. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission

of Inquiry are meant for information of the Government. The decision of the

Government does not suffer from an illegality or arbitrariness.

7A - With reference to the allegations made in paragraphs 14, 14.1, and 14.2 of the writ application I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or bearing what are matters of record as if

8. With regard to the statement in paragraph 15 of the writ petition, I state

that the relevant documents or records relating to alleged Netaji's disappearance

were not accessible to the Justice Mukherjee Commission of Inquiry is denied

and disputed. It is submitted that JMCI submitted its report on 8th November,

2005 after examining witness, visiting the U.K., Japan, Taiwan, Bangkok and

Russian Federation and after going through 308 exhibits. In respect of 'Secret'

and 'Top Secret' file/documents or records it may be stated that these records

relate to the appointment of Inquiry Committee on the death of Shri Subhash

Chandra Bose, ^{conferment of} after ~~to the~~ award of Bharat Ratna award (Posthumously) on

Netaji and as such, these do not contain any material which ^{are relevant to} have not been made

available to the Commission earlier. *All relevant important documents were provided to the Commission. Save as aforesaid all allegations contrary thereto or inconsistent therewith are emphatically denied and disputed before.*

9. With regard to the statement in paragraph 16.1, 16.2 and 16.3 of the writ petition, I ~~state~~ ^{deny} all such allegations ~~as~~ which are ~~contrary to or inconsistent~~ ^{with} that Shri Naresh Jaiswal was working in the Ministry of Home Affairs in the

capacity of Section Officer at the time of filing that affidavit and was duly

authorized by the Ministry to do so.

10. With regard to the statement in paragraph 16.4 of the writ petition, I state

that records were not made available to the Commission is denied. In fact, in

para 2.6 of its Report, the Commission itself has stated that out of 202 (two

** with what have been stated herein or bearing what are matters of record. I say that*

* set out
traversed
and/or
denied
in serial.

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318

hundred two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to the Commission.

11. With regard to the statement in paragraph 16.5 of the writ petition, I state that all available records were produced before the Justice Mukherjee Commission, ^{and} ~~as~~ such, there ~~seems to be~~ ^{is} no need to reappoint or reopen the JMCL. *or to set up any further Commission - I*

Inquiry

12. With regard to the statement in paragraph 17 of the writ petition, I state that the earlier two Committee/Commission namely, ^{Shah} ~~Nawaz~~ Committee and Khosla Commission have stated that Netaji Subhas Chandra Bose died in the plane crash at Taihoku Airport on 18th August, 1945. It is also humbly submitted that Government of India also accepted the finding of the said Committee/Commission.

13. With regard to the statement in paragraph 18 ~~& 19~~ of the writ petition, I state that the representation dated 11.3.2008 has not been received in the CDN Section of ~~the~~ ^{this} Division of the Ministry of Home Affairs. In view of what has been stated in reply to 17 above, there is no need for reappointment or reopening

of the Mukherjee Commission and the present petition may be dismissed. *I reserve*

my right to advance appropriate submission or submissions in this regard at the time of the hearing of the writ application.

14 - With regard to the statement in paragraph ^{made} 19 of the writ petition, ~~I state~~ ^{and the} grounds taken therein ~~in support of the writ petition~~, I deny that in spite of best efforts made by various organs of the Government, no records ~~and dispute each and every ground and submit~~ that no case for re-opening or re-appointing of the Mukherjee Commission has been made out, and as such, the said writ petition is liable to be dismissed.

(16)
14A - With reference to the allegations made in paragraph 20 of the writ petition I deny & 21 I say that the Central Government did not accept the Report very careful consideration did not accept the Report submitted by Justice Mukherjee Commission. 18

14-B -

With reference to the allegations made in paragraph 22 of the writ petition I say that in spite of best efforts made by different departments of the Government no record

could be found on the basis of which the then Hon'ble Prime Minister of India late Moraji Desai made the statement on the floor of Parliament on 28th August, 1978.

14-C -

With reference to the allegations made in paragraph 23 and 24 of the writ petition I deny and dispute the same. I say that Justice Mukherjee Commission had complete freedom to visit any country if wanted for the purpose of the enquiry into investigation. In fact the Commission went to several places and caused necessary enquiry and investigation. After completion of their enquiry and investigation the Justice Mukherjee Commission submitted its Report. In the circumstances no further need for further enquiry. I say as aforesaid all allegations or inconsistent therewith are denied and disputed by me.

allegations made
15. With regard to the statement in paragraph 25 of the writ petition, I state that the Government of India has accepted the findings of the Shah Nawaz

Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18th

August, 1945. ~~Some as aforesaid all other save as aforesaid~~ cell allegations contrary thereto or inconsistent therewith are denied and disputed by me. 16 - See back page

16. A - With regard to the statement in paragraph 28 of the writ petition, I state that the fundamental rights of the petitioners guaranteed under section 14 &

19(1) of the Constitution of the India have ^{not} been violated. The answering respondent respectfully submits that the report of Justice Mukherjee Commission of Enquiry was thoroughly examined; but it was observed that the Commission's

Enquiry was inconclusive and it has not been able to provide definite findings. It

is submitted that the Commission's finding that Netaji did ^{die} ~~not~~ in the plane crash are based on non-availability of 'clinching evidence'. It is submitted that Shah

Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the

same predicament and they, therefore, relied on oral evidences of the witnesses

including those who were co-passengers of Netaji in the said ill-fated plane and

came to the conclusion that Netaji died in the plane crash on 18th August, 1945

and that he was cremated in Taiwan Crematorium and his ashes were taken to

para 16 - See back portion

16-~~140~~ - with reference to the allegations made in paragraphs 26 & 27 of the writ petition, I deny and dispute the same. I ~~do~~ particularly deny the allegation that "the object of rejection of said ^{Justice} Mukherjee Commission Report is absolutely illegal and political motivation and against the said provision of law. ~~But~~ I reserve my right to advance appropriate submission or submissions in this regard at the time of the hearing of this writ application.

16 A - See overleaf -

Tokyo and preserved in the Renkoji temple, ~~the~~ Justice Mukherjee Commission's ^{Report} ~~therefore~~ ^{does} not conclusively disprove the plane crash ~~story~~ ^{light} in the ~~fact~~ of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree ^{burn} ~~burn~~ injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

16 B - With reference to the ~~allegations~~ ^{allegations} made in paragraphs 29, 30 and 31 of the writ petition, I ~~deny and dispute the same.~~

17. The statements contained in paragraphs of the Affidavit-in-Opposition to the writ petition of the petitioners are true to my knowledge and derived from the available relevant records and rests are my respectful submission before this Hon'ble Court.

Prepared in my office.

The deponent is known to me.

Advocate

Clerk to : Mr. Tarun Kumar Ghosh

Advocate

Solemnly affirmed before me

on this day of July, 2010.

COMMISSIONER

16 C - I ~~do~~ submit that the petitioners have failed to make out a case for reopening ~~the~~ or re-appointing Justice Mukherjee Commission. I further say that Justice Mukherjee Commission after thorough, protracted and painstaking efforts completed its enquiry/ investigation and, thereafter, submitted its report. All out efforts were made by Justice Mukherjee Commission to unearth the truth. In the premises nothing further remains to be done in the instant case. In the facts and circumstances of this case the present writ petition is liable to be dismissed.

Received
15.7.2010

ASG 12 SG of 2010 .

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT
JURISDICTION
(APPELLATE SIDE)

W.P. NO.8215 (W) OF 2008.

IN THE MATTER OF :

An application under Article 226 of the
Constitution of India;

-And-

IN THE MATTER OF :

SRI SUBHASI CHANDRA BASU &
ANR.

...PETITIONERS.

-Versus-

UNION OF INDIA & ORS.

.....RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON
BEHALF OF THE RESPONDENTS

Mr. Tarun Kumar Ghosh
Advocate
Bar Association Room No.2,
High Court, Calcutta,
Office at :
10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata - 700009.
Phone : 2350-9128 & 2351-2938.

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

W. P NO.8215(W) of 2008

IN THE MATTER OF :

An application under Article 226 of the
Constitution of India;

- And -

IN THE MATTER OF :

A writ or writs in the nature of
Mandamus;

-And-

IN THE MATTER OF ;

A writ or writs in the nature of Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of
Mukherjee Commission for completion of
Inquiry into the matter of alleged
disappearance and / or death of Netaji
Subhas Chandra Bose in 1945 and / or
continue further enquiry to find out the
date of death of Netaji Subhas Chandra

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Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2(d)- Whether he has died in any other manner at any other place and, if so, when and how", of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

IN THE MATTER OF :

The Evidence Act, 1872;

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

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IN THE MATTER OF :

Non-Consideration of the representative
dated 11.03.2008 sent by the petitioner
to the concerned authorities;

-And-

IN THE MATTER OF :

1. SRI SUBHAS CHANDRA BASU,
son of Late Surendra Nath Basu,
residing at 86, Sadar Boxi Lane, Post
Office, Police Station and District –
Howrah, Pin-711101;
2. SRI PANKAJ HALDER, son of Sri
Late Arabinda Halder, residing at Village-
Mathurapur, Post Office and Police
Station – Mathurapur, District – South 24
Parganas

.....PETITIONERS.

-Versus-

1. UNION OF INDIA,
Service through the Secretary, Ministry
of Home Affairs, Government of India,
North Block, New Delhi- 110001;

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2. Principal Secretary,
Government of India Office of Prime
Minister at 7, Race Course Road, New
Delhi-110003;

3. SECRETARY,
Ministry of Foreign Affairs, Government
of India, South Block, New Delhi –
110001.

4. SECRETARY
Ministry of Parliament Affairs,
Government of India, New Delhi-
110001.

....RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF
THE RESPONDENTS HEREIN ABOVE

I, L P ^L Srivastava, wife of Shri D K Shrivastava aged about 58 years,
by occupation – Service under Government of India and presently posted
in its office in New Delhi, residing at Delhi do hereby solemnly affirm and
state as follows:

1. I am one of the officer dealing with this matter on behalf of the
respondents and as such I am competent to swear this affidavit. In the
capacity of Dealing Officer, I know the facts and circumstances of the case
and the facts of the case are based on available records in my office. I

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have been authorized to affirm this affidavit on behalf of all the respondents.

2. I have read a copy of the writ petition No.8215(W) of 2008 affirmed by the petitioners and filed in the Hon'ble High Court under Article 226 of the Constitution of India and have understood the contents of the same.

3. Before dealing with relevant paragraphs of the said writ petition, at the outset, I state that the instant petition is not maintainable under Article 226 of the Constitution of India.

3A. With reference to the averment made in paragraph No.1 & 2, I say that the petitioners are indeed learned Advocates practicing in this Hon'ble Court. However, the rest of the averments made in the paragraph under reply are matters of facts relating to writ petition filed before the Hon'ble Apex Court and other matters filed before this Hon'ble Court and save what appears from the records of the said cases, I do not have any comments and do not admit anything.

4. With regard to the statement made in paragraph 3 of the writ petition I state that:

- A (i) The disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the beginning. The Government of India has, so far, appointed three Committees/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one, was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956.

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The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.

B (ii) The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

C (iii) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order / judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into

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the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.

D (iv) Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

E (v) The Justice Mukherjee Commission of Inquiry, (JMCI), submitted its Report on 8th November, 2005 on the following terms of references and concluded the following:-

S. No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged

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C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

in definit.

F (vi) The report of the JMCI was ~~thoroughly~~ examined. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of 'clinching evidence'. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple.

The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

G ~~(viii)~~ The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-

- a) Netaji did not die in the plane crash; and
- b) The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956".

H ~~(viii)~~ It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did

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not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-5 ^{4 G above} for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

5. With regard to the statement made in paragraphs 4,5 & 6 of the writ petition, I state that those are matters of record and save and except what appears from the records all allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me.

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6. With regard to the statement in paragraph 7 of the writ petition, ~~respondents want to say~~ *it is submitted* that on recommendations of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. A press communiqué announcing the conferment of award was issued by the President's Secretariat on January 22, 1992. In the case of posthumous awards, the award has to be received by the next of kin (NOK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was contacted in this connection, expressed certain reservations on receiving the award as according to her such an honour should have been appropriate in the fifties and said that one cannot honour Netaji today by awarding the Bharat Ratna to him. She declined to receive the award. Apart from declining of the award by Netaji's daughter, some persons submitted a memorandum to the then President. However, it was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award is actually conferred by the President during the presentation ceremony. Since the award was declined by the NOK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.

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6A. With reference to the allegations made in paragraphs 8, 9, 10, 11, 12 and 12.1 of the writ petition I say that the same are matters of record and save what appears from the records I do not admit anything.

7. With regard to the statement in Paragraph 13 of the writ petition, I deny that the Central Government had rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.5.2006 without assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is further submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they also relied on oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission, therefore, does not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for severe and serious burn injuries sustained in the plane crash. Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission and therefore, found it difficult to accept the conclusions of Justice Mukherjee Commission of Inquiry.

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Further, it is always open to the Government of India to accept or reject
~~substantive~~ the findings of a Commission. The Commissions of Inquiry Act, 1952

Amicus I
provides that the report of the Commission also with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may ~~be advised~~ ². No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information ² of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

deem appropriate?

7A. With reference to the allegations made in paragraphs 14, 14.1 and 14.2 of the writ application I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or barring what are matters of record as if set out traversed and / or denied in seriatim.

8. With regard to the statement in paragraph 15 of the writ petition, I state that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry is denied and disputed. It is submitted that JMCI submitted its report on 8th November, 2005 after examining witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committees on the death of Shri Subhash Chandra Bose,

conferment of award of Bharat Ratna award (Posthumously) on Netaji, and as such, these do not contain any material which are relevant. All relevant important documents were provided to the Commission save as aforesaid allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me.

9. With regard to the statement in paragraphs 16, 16.1, 16.2 and 16.3 of the writ petition I deny all such allegations which are contrary to or inconsistent with what have been stated herein or barring what are matters of record I say that Shri Naresh Jaiswal was working in the Ministry of Home Affairs in the capacity of Section Officer at the time of filing that affidavit and was duly authorized by the Ministry to do so.

10. With regard to the statement in paragraph 16.4 of the writ petition, I state that records were not made available to the Commission is denied. In fact, in para 2.6 of its Report, the Commission itself has stated that out of 202 (two hundred and two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to the Commission.

11. With regard to the statement in paragraph 16.5 of the writ petition, I state that all available records were produced before the Justice Mukherjee Commission and as such, there is no need to reappoint or reopen the JMCI or to set up any further Commission of Inquiry.

12. With regard to the statement in paragraph 17 of the writ petition, I state that the earlier two Committee/Commission namely Shah Nawaz

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Committee and Khosla Commission have stated that Netaji Subhash Chandra Bose died in the plane crash at Taihoku Airport on 18th August, 1945. It is also humbly submitted that Government of India also accepted the finding of the said Committee/Commission.

13. With regard to the statement in paragraph 18 of the writ petition, I state that the representation dated 11.3.2008 has not been received in the ^{concerned} Co-ordination Section/ Division of the Ministry of Home Affairs. In view of what has been stated in ^{para 7} reply to ~~17~~ above, there is no need for reappointment or reopening of the Mukherjee Commission and the present petition may be dismissed. I reserve my right to advance appropriate submission or submissions in this regard at the time of the hearing of the writ application.

14. With regard to the statement made in paragraph 19 of the writ petition and the Grounds taken therein in support of the writ petition, I deny and dispute each and every ground and submit that no case for re-opening or re-appointing of the Mukherjee Commission has been made out, and as such, the said writ petition is liable to be dismissed.

14A. With reference to the allegations made in paragraphs 20 & 21 of the writ petition, I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or barring what are matters of record as if set out traversed and / or denied in seriatim. I say that the Central Government after very careful consideration did not accept the Report submitted by Justice Mukherjee Commission.

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14B. With reference to the allegations made in paragraph 22 of the writ petition, I submit that inspite of best efforts made by different departments of the Government no records could be found on the basis of which the then Hon'ble Prime Minister of India late Moraji Desai made the statement on the floor of Parliament on 28th August, 1978.

14C. With reference to the allegations made in paragraphs 23 and 24 of the writ petition I deny and dispute the same. I submit that Justice Mukherjee Commission had complete freedom to visit any country if wanted for the purpose of the enquiry or investigation. In fact the commission went to several places in India and abroad and caused ^{conducted} necessary enquiry and investigation within the country and outside India. After completion of their enquiry and investigation, Justice Mukherjee Commission submitted its Report. In the circumstances there is no need for further enquiry. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

15. With regard to the allegations made in paragraph 25 of the writ petition, I state that the Government of India has accepted the findings of the Shah Nawaz Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18th August, 1945. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

16. With reference to the allegations made in paragraphs 26 & 27 of the writ petition, I deny and dispute the same. I particularly deny the allegation

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that "the object of rejection of said Justice Mukherjee Commission Report is absolutely illegal and against the said provision of law. I reserve my right to advance appropriate submission or submissions in this regard at the time of the hearing the writ application.

16A. With regard to the statement in paragraph 28 of the writ petition, I state that the fundamental rights of the petitioners guaranteed under section 14 & 19(1) of the Constitution of the India have not been violated. The answering respondent respectfully submits that the report of Justice Mukherjee Commission of Enquiry was thoroughly examined; but it was observed that the Commission's Enquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple. Justice Mukherjee Commission's, Report therefore, does not conclusively disprove the plane crash in the light of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government

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DISTRICT : HOWRAH

IN THE HIGH COURT AT
CALCUTTA
CONSTITUTIONAL WRIT
JURISDICTION
(APPELLATE SIDE)

W.P NO.8215(W) OF :2008

IN THE MATTER OF :

An application under Article 226 of
the Constitution of India;

-And-

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU &
ANR

PETITIONERS

-Verus-

UNION OF INDIA & ORS

RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON
BEHALF OF THE RESPONDENTS

Mr Tarun Kumar Ghosh
Advocate
Bar Association Room No.2,
High Court, Calcutta,
Office at:

10-A, Dr. Kartick Bose Street,
1st Floor Kolkata – 700009
Phone 2350-9128 & 2351-2988

of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

16B. With reference to the allegations made in paragraphs 29 & 30 and 31 of the writ petition, I deny and dispute the same.

16C. I submit that the petitioners have failed to make out a case for re-opening or re-appointing Justice Mukherjee Commission. I further say that Justice Mukherjee Commission after thorough, protracted and painstaking efforts completed its enquiry/investigation and, thereafter, submitted its report. All out efforts were made by Justice Mukherjee Commission to unearth the truth. In the premises nothing further remains to be done in the instant case. In the facts ad circumstances of this case the present writ petition is liable to be dismissed.

17. The statement contained in paragraphs _____ of the Affidavit-in-Opposition to the writ petition of the petitioners are true to my knowledge and derived from the available relevant records and rests are my respectful submission before this Hon'ble Court.

Prepared in my office

The deponent is known to me

Advocate

Clerk to

Solemnly affirmed before me on this
day of 2010.

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Most Immediate
By Special Messenger

No.12014/6/2008-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 15th December, 2010

Office Memorandum

Sub: WP No. 8215(W)/08 filed by Shri Subhash Chandra Basu and Ors Vs. Union of India & Ors.

The undersigned is directed to refer to PMO I.D No.1249196/PMO/2009-Pol.1 dated 19.3.2008. The Writ Petition No.8215(W)/08 has been filed by Shri Subhash Chandra Basu & others Vs Union of India. A copy of the Writ Petition is enclosed. As may be seen besides Ministry of Home Affairs, Principal Secretary of PM, Ministry of Parliamentary Affairs and Ministry of Foreign Affairs have been made Respondents to this Writ Petition. Ministry of Home Affairs prepared the para-wise comments and sent the same to Additional Govt. Counsel, Ministry of Law Justice, Branch Secretariat, Kolkata for preparing the Affidavit.

2. The case came up for hearing on 19-11-2010 and the case has been adjourned for final hearing on 13th Jan 2011. The draft Affidavit received has been modified and edited by this Ministry. A copy of the Affidavit is being sent to PMO for suggesting any edition / deletion.

3. PMO is requested to kindly arrange to furnish the comments by 24th Dec'2010 positively. It may also be confirmed whether the PMO may like to file a separate Affidavit and if so, the status may also be conveyed to this Ministry.

Enclo : As above.

PIS No 11/08

**Shri Ashish Gupta,
Director,
Prime Minister's Office
South Block, New Delhi.**

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel: 24617196

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OM No. 12014/6/2008- Cdm.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 15th December, 2010

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Enclo : As above.

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel: 24617196

P.B. u/08
15/12/10
**Shri Sandeep Chakraborty,
Director(EA)
Ministry of External Affairs,
South Block,
New Delhi.**

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Most Immediate
By Special Messenger

No.12014/6/2008-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 15th December, 2010

Office Memorandum

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The undersigned is directed to say that the Writ Petition No.8215(W)/08 has been filled by Shri Subhash Chandra Basu & others Vs Union of India. A copy of the Writ Petition is enclosed. As may be seen besides Ministry of Home Affairs, Principal Secretary of PM, Ministry of Parliamentary Affairs and Ministry of Foreign Affairs have been made Respondents to this Writ Petition. Ministry of Home Affairs prepared the para-wise comments and sent the same to Additional Govt. Counsel, Ministry of Law Justice, Branch Secretariat, Kolkata for preparing the Affidavit.

2. The case came up for hearing on 19-11-2010 and the case has been adjourned for final hearing on 13th Jan 2011. The draft Affidavit received has been modified and edited by this Ministry. A copy of the Affidavit is being sent for suggesting any edition / deletion.

3. It is requested to kindly arrange to furnish the comments by 24th Dec'2010 positively. It may also be confirmed whether Ministry of Parliamentary Affairs may like to file a separate Affidavit and if so, the status may also be conveyed to this Ministry.

Enclo : As above.

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel: 24617196

**Secretary
Ministry of Parliamentary Affairs,
(Ms Usha Mathur),
08, Parliament House,
New Delhi.**

P.B 3/08

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SPED POST

3342/2012

No. 592/Home/08-III/

2504/4839

Govt. of India

Ministry of Law and Justice

Deptt. Of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor (Middle Row Bldg.),
Kolkata-700 001

Urgent/By Speed Post

Dated the 10th December, 2010

✓ To

Shri K. Muralidharan,
Deputy Secretary to the Govt. of India,
Ministry of Home Affairs, IS-II Division,
Lok Nayak Bhavan, 9th floor, C Wing, Room No.8,
NEW DELHI- 110 003,

Subject: W.P.No. 8215 (W) of 2008

Subhas Chandra Bose -vs- Union of India & Ors.

Sir,

This is to inform you that the above matter came up before the Hon'ble The Chief Justice and the Hon'ble Justice Ashim Kumar Roy on 19th November, 2010 when after hearing Their Lordships have been pleased to direct that the matter will come up for **final hearing** on **13th January, 2011**. Please note that vide this office letter dated 19th November, 2010 addressed to Shri B.K. Rekhi, Section Officer, Ministry of Home Affairs, New Delhi, this office has already forwarded draft Affidavit in Opposition drawn by Shri Tarun Kumar Ghosh, Advocate and duly settled by Mr. Farook M. Razack, Ld. Addl. Solicitor General, Calcutta High Court, for your approval and final typing in engrossed papers(green sheets). Since the matter will come up for final hearing on 13th January, 2011, you are requested to affirm the said Affidavit in opposition immediately before the Oath Commissioner, Delhi High Court and send the same to this office for filing.

P-put up in due by
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V S Gauth

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: 2 :

Please also note that the Affidavit in Opposition should be typed (two copies) in engrossed papers (green sheets) – one for Hon'ble The Chief Justice and another for second Judge and five copies in white sheets for service to the other side's Counsel and for our Counsel engaged in the matter . These should be forwarded to this Law Ministry immediately.

Please also note that Mr. Farook M. Razack, Ld.Addl. Solicitor General, Shri Somenath Bose, Advocate and Shri Tarun Kumar Ghosh, Advocate are appearing in this matter. You may contact Shri Somenath Bose, Advocate(Mobile No.09830005652) as he has already been engaged to appear on your behalf. You may also come down to Kolkata for conference with Ld. Addl. Solicitor General. A copy of letter dated 9th December, 2010 received from Shri Tarun Kumar Ghosh, Advocate is enclosed herewith for your information and necessary action.

Please treat this matter as **most urgent**.

Encl: as above.

Yours faithfully,

S. Bhattacharyya
(S.Bhattacharyya)

Sr.Govt.Advocate & Incharge

Copy to:

Shri Tarun Kumar Ghosh, Advocate, High Court, Bar Association,
Room No.2, Kolkata – for information and necessary action.

(S.Bhattacharyya)

Sr.Govt.Advocate & Incharge

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Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

Ph: Bar Association: 2248-5579/3190

Fax No: (033) 2248-2313

E-mail: tarungho@nlcmv.net.in

Chamber : 2350-9128 & 2351-2928

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009

Visiting Hours : 6 P.M. to 9 P.M.

By hand.

The 09th December, 2010

To
The Senior Govt. Counsel,
Ministry of Law & Justice,
Department of Legal affairs,
11, Strand Road, Kolkata-700001.

Your Ref. file No.592/Home/08-III, dated 22/29.05.2009

Re: W.P. No.8215 (W) of 2008;

Subhas Chandra Bose

.....Petitioner

-VS-

Union of India & Ors.

.....Respondents

(The Pil matter is pending in the Hon'ble High Court, Calcutta for adjudication.)

Dear Sir,

Kindly refer to my last letter dated 24th August, 2010 by which I brought to your notice about out come of last hearing in the matter on 20.08.2010.

In this context, I would like to place it on your record that the matter was came up for hearing on 19th November, 2010 as listed matter. At the time of its hearing, I myself led by the Addl. Solicitor General Sk. Farooq Razak and the Ld. Senior Counsel Mr. R.N. Das appeared on your behalf before Their Lordships the Hon'ble Mr. Jainarayan Patel, Chief Justice and the Hon'ble Justice Ashim Kumar Roy. The matter was heard. After hearing the Ld. Advocates for the respective parties Their Lordships directed that the matter will come up for final hearing on 13.01.2011 as listed matter. It is, therefore, necessary to be filed Affidavit-in-Opposition in the meantime.

In view of the matter, I have sent you again on 02.12.2010 the under noted papers for your record and doing the needful, 1) Copy of Writ Petition, 2) Copy of draft opposition settled by the Addl. Solicitor General on 19.07.2010.

Thanking you,

Yours faithfully,

(TARUN KUMAR GHOSH)

Advocate 09.12.2010

Enclo: As stated above
Room No. 20, LAWYERS CHAMBER, SUPREME COURT COMPOUND, NEW DELHI-110 001.

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F.No./ 115(9)/2010ME
Government of
Ministry of Parliamentary Affairs

86-B, Parliament House,
New Delhi.

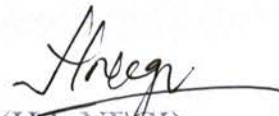
Dated: 23rd December, 2010

OFFICE MEMORANDUM

Subject: WP No.8215(W)/08 –Shri Subhash Chandra Basu & Ors. Vs UOI in the High Court at Calcutta regarding Reappointment or reopening of Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhash Chandra Bose.

The undersigned is directed to refer to Ministry of Home Affairs O.M. No. 12.014/6/2008-Cdn dated 15th December, 2010 on the subject cited above and to state that since the Ministry of Parliamentary Affairs is not concerned with the subject matter, this Ministry have no comments to offer on the draft Affidavit. The Ministry does not propose to file a separate Affidavit.

2. In view of the above, Ministry of Home Affairs is requested to get the name of Ministry of Parliamentary Affairs deleted from the list of respondents.
3. This issues with the approval of the Secretary, Ministry of Parliamentary Affairs


(H.L.NEGI)
Director

Home

Ministry of ~~Parliamentary~~ Affairs,
(Shri K.Muralidharan, Deputy Secretary)
Lok Nayak Bhavan, 9th Floor, C Wing
Room No.8 New Delhi

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25/12

PRIME MINISTER'S OFFICE
[POLITICAL SECTION]

South Block, New Delhi – 110 101

Subject: Writ Petition no. 8215(W)/2008 filed in Calcutta High Court in the Subhash Chandra Basu & Another Vs. Union of India & Others

Reference is invited to Ministry of Home Affairs OM no. 12014/6/2008-Cdn. dated 15.12.2010, on the above subject.

2. The undersigned is directed to convey that this office has no comments to offer and to request Home Ministry to file affidavit for Government of India, in consultation with the other Ministries concerned, after due vetting.


(Amit Agrawal)

Director

Tel. 2301 2613

Fax No. 23016857

Ministry of Home Affairs [Attn. Joint Secretary (IS-II), Smt. Rashmi Goel]

PMO ID no. 915/11/C/1/2009-Pol

Dated: 24.12.2010

DSCS/3225/10
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No. 1-12014/5/2007-NCB
Government of India
Ministry of Home Affairs
IS-II Division

'C' Wing, 9th Floor,
Lok Nayak Bhawan, Khan Market,
New Delhi the 17th January, 2011

Office Memorandum

07 JAN 2011

- Sub: (i) W.P. No. 8215 (W)/2008 filed by Shri Subhash Chandra Basu & Others Vs. Union of India & Ors.
(ii) W.P. No. 2003/2006 -Rudra Jyoti Bhattacharya & Ors Vs. Union of India & Ors
(iii) W.P. No.27541 (W) of 2006 -Ashim Kumar Ganguly & Ors Vs. Union of India & Ors regarding Death of Netaji Subhash Chandra Bose

The undersigned is directed to invite your kind attention on the above noted subject and to refer to the telephonic discussions with the undersigned on 5.1.2011. Additional Solicitor General has informed the undersigned that the case is coming up for final hearing on 13.1.2011. It is conveyed that Counter Affidavit has not been filed in the WP No. 8215(W) of 2008 -Subhash Chandra Basu Vs. Union of India. During the hearing before the Ld. Court of Chief Justice on 19.11.2010 at 2.00 p.m., it was mentioned by the Advocate of the Petitioner that Counter Affidavit has not been filed in the aforesaid writ petition. The learned Additional Solicitor General appeared on behalf of Government of India and Ld. Court advised that Union Government should file the affidavit in this Writ Petition and the final hearing will take place on 13th January, 2011.

2. In this connection, I am further directed to convey that in the W.P. No.8215(W) of 2008 filed by Shri Subhash Chandra Basu & Ors Vs. Union of India, MHA, Principal Secretary of PM, Ministry of External Affairs and Ministry of Parliamentary Affairs have been made Respondents to this writ petition. The MHA had prepared the parawise comments and forwarded the same to Additional Government Counsel, Ministry of Law & Justice, Branch Sectt,

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Court cases
Most Immediate

F No.I—12014/5/2007-Cdn
Government of India
Ministry of Home Affairs
(Internal Security.II Division)

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 10th January, 2011.

Sub : Writ Petitions filed in Calcutta High Court regarding the
alleged disappearance of Netaji Subhas Chandra Bose

The undersigned is directed to convey that there are three Writ Petitions filed on the above subject matter in the Calcutta High Court and the hearing is going on. The Addl. Solicitor General, Kolkata has forwarded a copy of the news items that appeared in Pune Times dated 18th August, 2010, a copy is enclosed which is self-explanatory.

2. As may be seen it has been mentioned in the Article that the Pune City based World Peace Centre (WPC) has received clearance from the Union Government through Indo-Japan Association for bringing the ashes that are currently in Tokyo's Netaji Subhas Chandra Memorial and will be handed over to the WPC. MHA has not received any such request and has not given any clearance in this regard.

3. It has been asserted from the Ministry of External Affairs that they have not given any approval to any of the NGOs in the matter. Ministry of Culture who are concerned with the celebrations of Birth / Death anniversaries of VIPs is requested to inform this Ministry if they have given any permission to this effect. The next date of hearing for the three Writ Petitions has been fixed for 13th January, 2011.

4. It is requested that information may be provided immediately by return FAX so that necessary Affidavit could be filed in the Hon'ble High Court of Calcutta.

(K Muralidharan)
Deputy Secretary(S)
Tel.:24617196
Fm

Shri K S Lather,
Deputy Secretary(C&M)
Ministry of Culture
Ground Floor, Vigyan Bhawan Annexe
New Delhi.

Issued vide PB No. 14 of 2010

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Kolkata on 2.4.2009 for preparing the affidavit. The draft affidavit has been received in this Ministry and the same has been modified and edited by this Ministry. Since PMO, Ministry of External Affairs and Ministry of Parliamentary Affairs have also been made Respondent to the writ petition, a copy of draft affidavit prepared by this Ministry has been forwarded to PMO, MEA and Ministry of Parliamentary Affairs for their comments on 15th December, 2010. The comments of PMO and Parliamentary Affairs have been received. The comments of PMO are as under:

Comments of PMO:

"PMO has no comments to offer and to request Home Ministry to file affidavit for Government of India, in consultation with the other Ministries concerned, after due vetting."

Comments of Ministry of Parliamentary Affairs:

"The Ministry of Parliamentary Affairs is not concerned with the subject matter and have no comments to offer on the draft affidavit. The Ministry does not propose to file a separate affidavit. In view of the above, Ministry of Home Affairs is requested to get the name of Ministry of Parliamentary Affairs deleted from the list of Respondents."

3. The comments of Ministry of External Affairs has not yet been received and that Ministry has already been reminded to expedite the comments. Till the comments of MEA is received, this Ministry is not in a position to forward the draft final affidavit to you for filing. It is, therefore, requested that extension of time may kindly be arranged to be sought for filing the Counter Affidavit.

4. With regard to W.P. No. 2003/2006 -Rudra Jyoti Bhattacharya & Ors Vs. Union of India & Ors., Supplementary Petition has been filed by one Shri Surojit Das Gupta. PMO and MHA have been made Respondents in this case. Since, MEA is also concerned with the subject matter and the Petitioner has

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not made MEA as a Respondent. Therefore, comments from PMO and MEA have been called for.

5. PMO has requested Ministry of Home Affairs may consult Ministry of External Affairs in the matter. MEA has so far not furnished their comments. MEA has been requested to furnish parawise comments on the above mentioned Supplementary Petition in order to prepare counter affidavit by MHA on behalf of MEA. MEA has been reminded at the higher official level.

6. With regard to W.P. No.27541 (W) of 2006 -Ashim Kumar Ganguly & Ors Vs. Union of India & Ors regarding Death of Netaji Subhash Chandra Bose, in this case also reply to supplementary affidavit is yet to be filed. Since MEA is concerned with the subject relating to alleged ashes staked in the Renkoji Temple at Japan, that Ministry have been requested to send their comments to enable this Ministry to file a counter affidavit on behalf of MEA which are still awaited.

7. In view of the above detailed position, it is requested that extension of time for filing the Counter Affidavit may please be arranged to be conveyed to the Ministry.

Shri Farooq M. Razak,
Additional Solicitor General,
19, Balu Hakak Lane,
Park Circus,
Kolkata-700017

(K. Muralidharan)
Deputy Secretary to the Govt. of India
Tel.: 24617196



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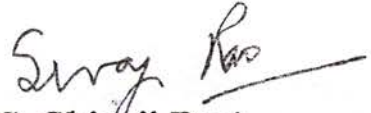
No. 12014/6/2008-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 24th January, 2011.

Office Memorandum

**Sub: WP No. 8215(W)/08 filed by Shri Subhash Chandra Basu and
Ors Vs. Union of India & Ors.**

The undersigned is directed to refer to this Ministry's OM of even number dated 15th December, 2010 on the above subject. You were requested to arrange to furnish the comments by 24th December, 2010. The same has not been received so far. It may please be confirmed whether Ministry of External Affairs may like to file a separate Affidavit and if so, the status may also be conveyed to this Ministry.


(S.C. Shivaji Rao)
Deputy Secretary (L)

**Shri Sandeep Chakraborty,
Director(EA)
Ministry of External Affairs,
South Block,
New Delhi.**

Issued vide NCB PB 10/0

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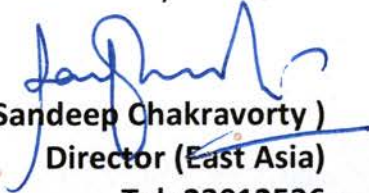
25/1/2011.

Ministry of External Affairs
(East Asia Division)

Sub: WP No.8215(W)/08 filled by Shri Subhash Chandra Basu and Ors Vs. Union of India & Ors.

-:ooOoo:-

Reference your O.M. No.12014/6/2008-Cdn. Dated 24th January, 2011 on the above subject. Please send us the draft affidavit as mentioned in MHA Office Memorandum dated 15th December, 2010 as the same has not received by us.


(Sandeep Chakravorty)
Director (East Asia)
Tel: 23012536
Fax: 23016514

- 1) **Shri S.C. Shivaji Rao**, Deputy Secretary(L), Ministry of Home Affairs, IS-II Division, Lok Nayak Bhavan, 9th Floor, 'C' Wing, Room No.8, New Delhi

MEA U.O. No.25/4/NGO-VOI-XVII

1 February 2011

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Ministry of External Affairs
(East Asia Division)

Sub: WP No.8215(W)/08 filled by Shri Subhash Chandra Basu and Ors Vs. Union of India & Ors.

-:ooOoo:-

Reference your O.M. No.12014/6/2008-Cdn. Dated 24th January, 2011 on the above subject. Please send us the draft affidavit as mentioned in MHA Office Memorandum dated 15th December, 2010 as the same has not received by us.


(Sandeep Chakravorty)
Director (East Asia)
Tel: 23012536
Fax: 23016514

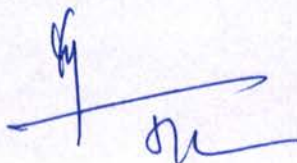
- 1) **Shri S.C. Shivaji Rao**, Deputy Secretary(L), Ministry of Home Affairs, IS-II Division, Lok Nayak Bhavan, 9th Floor, 'C' Wing, Room No.8, New Delhi

MEA U.O. No.25/4/NGO-VOI-XVII

1 February 2011

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12014/6/2008-Cdn
Government of India
Ministry of Home Affairs
IS-II Division

Lok Nayak Bhawan, 9th Floor, 'C' Wing,
Room No. 8, New Delhi, Dated the 9th February, 2011.

OFFICE MEMORANDUM

**Sub: WP No. 8215(W)/08 filled by Shri Subhash Chandra Basu
and Ors Vs. Union of India & Ors.**

The undersigned is directed to refer to refer to MEA's U.O
No. 25/4/No - Vol- XVII dated 1st February, 2011 and to say that Draft
Affidavit is enclosed.

L.P. Shrivastava
9/2/11
(Smt. L.P. Shrivastava)

Under Secretary to the Govt. of India

Shri Sandeep Chakraborty,
Director (EA)
Ministry of External Affairs,
South Block,
New Delhi.

Issued vide PB 1/2010

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10/2/2011.

Message Confirmation Report

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Ministry of External Affairs
(East Asia Division)

Sub: WP No.8215(W)/08 filled by Shri Subhash Chandra Basu and Ors Vs. Union of India & Ors.

-:ooOoo:-

We have perused the Draft Affidavit faxed along with O.M. No.12014/6/2008-Cdn dated 9th February, 2011. This Ministry agrees with the contents of the Draft Affidavit and there are no additional comments to offer. The Ministry of External Affairs does not propose to file a separate Affidavit in this case.

(Sandeep Chakravorty)
Director (East Asia)

Tel: 23012536

Fax: 23016514

- 1) **Shri S.C. Shivaji Rao**, Deputy Secretary(L), Ministry of Home Affairs, IS-II Division, Lok Nayak Bhavan, 9th Floor, 'C' Wing, Room No.8, New Delhi
- 2) **Shri K. Muralidharan**, DS(IS-II), Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi

MEA U.O. No.25/4/NGO-VOI-XVII

19 February 2011

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

W. P NO.8215(W) of 2008

IN THE MATTER OF :

An application under Article 226 of the
Constitution of India;

- And -

IN THE MATTER OF :

A writ or writs in the nature of
Mandamus;

-And-

IN THE MATTER OF ;

A writ or writs in the nature of Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of
Mukherjee Commission for completion of
Inquiry into the matter of alleged
disappearance and / or death of Netaji
Subhas Chandra Bose in 1945 and / or
continue further enquiry to find out the
date of death of Netaji Subhas Chandra

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Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2(d)- Whether he has died in any other manner at any other place and, if so, when and how", of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

IN THE MATTER OF :

The Evidence Act, 1872;

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

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IN THE MATTER OF :

Non-Consideration of the representative
dated 11.03.2008 sent by the petitioner
to the concerned authorities;

-And-

IN THE MATTER OF :

1. SRI SUBHAS CHANDRA BASU,
son of Late Surendra Nath Basu,
residing at 86, Sadar Boxi Lane, Post
Office, Police Station and District –
Howrah, Pin-711101;

2. SRI PANKAJ HALDER, son of Sri
Late Arabinda Halder, residing at Village-
Mathurapur, Post Office and Police
Station – Mathurapur, District – South 24
Parganas

.....PETITIONERS.

-Versus-

1. UNION OF INDIA,
Service through the Secretary, Ministry
of Home Affairs, Government of India,
North Block, New Delhi- 110001;

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2. Principal Secretary,

Government of India Office of Prime
Minister at 7, Race Course Road, New
Delhi-110003;

3. SECRETARY,

Ministry of Foreign Affairs, Government
of India, South Block, New Delhi –
110001.

4. SECRETARY

Ministry of Parliament Affairs,
Government of India, New Delhi-
110001.

....RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF

THE RESPONDENTS HEREIN ABOVE

I, L P Shrivastava, wife of Shri D K Shrivastava aged about 58 years, by occupation – Service under Government of India and presently posted in its office in New Delhi, residing at Delhi do hereby solemnly affirm and state as follows:

1. I am one of the officer dealing with this matter on behalf of the respondents and as such I am competent to swear this affidavit. In the capacity of Dealing Officer, I know the facts and circumstances of the case and the facts of the case are based on available records in my office. I

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have been authorized to affirm this affidavit on behalf of all the respondents.

2. I have read a copy of the writ petition No.8215(W) of 2008 affirmed by the petitioners and filed in the Hon'ble High Court under Article 226 of the Constitution of India and have understood the contents of the same.

3. Before dealing with relevant paragraphs of the said writ petition, at the outset, I state that the instant petition is not maintainable under Article 226 of the Constitution of India.

3A. With reference to the averment made in paragraph No.1 & 2, I say that the petitioners are indeed learned Advocates practicing in this Hon'ble Court. The rest of the averments made in the paragraph under reply are matters of facts relating to writ petition filed before the Hon'ble Apex Court and other matters filed before this Hon'ble Court and save what appears from the records of the said cases, I do not have any comments and do not admit anything.

4. With regard to the statement made in paragraph 3 of the writ petition I state that:

(A) The disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the beginning. The Government of India has, so far, appointed three Committees/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in

the year 1956. The Committee examined 67 witnesses.

Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.

- (B) The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.
- (C) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order / judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary

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arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.

(D) Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(E) The Justice Mukherjee Commission of Inquiry, (JMCI), submitted its Report on 8th November, 2005 on the following terms of references and concluded the following:-

S. No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas	Netaji Subhas Chandra

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	Chandra Bose is dead or alive;	Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

(F) The report of the JMCI was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of "clinching evidence". Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in

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the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

- (G) The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

"2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-

- a) Netaji did not die in the plane crash; and
- b) The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956".

- (H) It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there

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are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the recommendations/findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-4(G) above for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

5. With regard to the statement made in paragraphs 4,5 & 6 of the writ petition, I state that those are matters of record and save and except what

appears from the records all allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me.

6. With regard to the statement in paragraph 7 of the writ petition, it is submitted that on recommendations of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. A press communiqué announcing the conferment of award was issued by the President's Secretariat on January 22, 1992. In the case of posthumous awards, the award has to be received by the next of kin (NOK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was contacted in this connection, expressed certain reservations on receiving the award as according to her such an honour should have been appropriate in the fifties and said that one cannot honour Netaji today by awarding the Bharat Ratna to him. She declined to receive the award. Apart from declining of the award by Netaji's daughter, some persons submitted a memorandum to the then President. However, it was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award is actually conferred by the President during the presentation ceremony. Since the award was declined by the NOK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.

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6A. With reference to the allegations made in paragraphs 8, 9, 10, 11, 12 and 12.1 of the writ petition I say that the same are matters of record and save what appears from the records I do not admit anything.

7. With regard to the statement in Paragraph 13 of the writ petition, I deny that the Central Government had rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.5.2006 without assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is further submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they also relied on oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission, therefore, does not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for severe burn injuries sustained in the plane crash. Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry. Further, it is always open to the Government of India to accept or reject the recommendations/findings of a

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Commission. The Commissions of Inquiry Act, 1952 (Annexure-I) provides that the report of the Commission also with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may deem appropriate. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

7A. With reference to the allegations made in paragraphs 14, 14.1 and 14.2 of the writ application, I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or barring what are matters of record as if set out traversed and / or denied in seriatim.

8. With regard to the statement in paragraph 15 of the writ petition, I state that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry is denied and disputed. It is submitted that JMCI submitted its report on 8th November, 2005 after examining witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits. In respect of 'Secret' and 'Top Secret' file/documents or records, it may be stated that these records relate to the appointment of Inquiry Committees on the death of Shri Subhash Chandra Bose, conferment of award of Bharat Ratna award (Posthumously) on Netaji, and

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as such, these do not contain any material which are relevant. All relevant important documents were provided to the Commission save as aforesaid allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me.

9. With regard to the statement in paragraphs 16, 16.1, 16.2 and 16.3 of the writ petition, I deny all such allegations which are contrary to or inconsistent with what have been stated herein or barring what are matters of record I say that Shri Naresh Jaiswal was working in the Ministry of Home Affairs in the capacity of Section Officer at the time of filing that affidavit and was duly authorized by the Ministry to do so.

10. With regard to the statement in paragraph 16.4 of the writ petition, I state that records were not made available to the Commission is denied. In fact, in para 2.6 of its Report, the Commission itself has stated that out of 202 (two hundred and two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to the Commission.

11. With regard to the statement in paragraph 16.5 of the writ petition, I state that all available records were produced before the Justice Mukherjee Commission and as such, there is no need to reappoint or reopen the JMCI or to set up any further Commission of Inquiry.

12. With regard to the statement in paragraph 17 of the writ petition, I state that the earlier two Committee/Commission namely Shah Nawaz Committee and Khosla Commission have stated that Netaji Subhash

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Chandra Bose died in the plane crash at Taihoku Airport on 18th August, 1945. It is also humbly submitted that Government of India also accepted the finding of the said Committee/Commission.

13. With regard to the statement in paragraph 18 of the writ petition, I state that the representation dated 11.3.2008 has not been received in the concerned Section/ Division of the Ministry of Home Affairs. In view of what has been stated in Para-7 above, there is no need for reappointment or reopening of the Mukherjee Commission and the present petition may be dismissed. I reserve my right to advance appropriate submission or submissions in this regard at the time of the hearing of the writ application.

14. With regard to the statement made in paragraph 19 of the writ petition and the Grounds taken therein in support of the writ petition, I deny and dispute each and every ground and submit that no case for re-opening or re-appointing of the Mukherjee Commission has been made out, and as such, the said writ petition is liable to be dismissed.

14A. With reference to the allegations made in paragraphs 20 & 21 of the writ petition, I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or barring what are matters of record as if set out traversed and / or denied in seriatim. I say that the Central Government after very careful consideration did not accept the Report submitted by Justice Mukherjee Commission.

14B. With reference to the allegations made in paragraph 22 of the writ petition, I submit that inspite of best efforts made by different departments

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of the Government no records could be found on the basis of which the then Hon'ble Prime Minister of India late Moraji Desai made the statement on the floor of Parliament on 28th August, 1978.

14C. With reference to the allegations made in paragraphs 23 and 24 of the writ petition I deny and dispute the same. I submit that Justice Mukherjee Commission had complete freedom to visit any country if wanted for the purpose of the enquiry or investigation. In fact the commission went to several places in India and abroad and conducted necessary enquiry and investigation within the country and outside India. After completion of their enquiry and investigation, Justice Mukherjee Commission submitted its Report. In the circumstances there is no need for further enquiry. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

15. With regard to the allegations made in paragraph 25 of the writ petition, I state that the Government of India has accepted the findings of the Shah Nawaz Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18th August, 1945. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

16. With reference to the allegations made in paragraphs 26 & 27 of the writ petition, I deny and dispute the same. I particularly deny the allegation that "the object of rejection of said Justice Mukherjee Commission Report is absolutely illegal and against the said provision of law. I reserve my

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right to advance appropriate submission or submissions in this regard at the time of the hearing the writ application.

16A. With regard to the statement in paragraph 28 of the writ petition, I state that the fundamental rights of the petitioners guaranteed under section 14 & 19(1) of the Constitution of the India have not been violated. The answering respondent respectfully submits that the report of Justice Mukherjee Commission of Enquiry was thoroughly examined; but it was observed that the Commission's Enquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple. Justice Mukherjee Commission's, Report therefore, does not conclusively disprove the plane crash in the light of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

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16B. With reference to the allegations made in paragraphs 29 & 30 and 31 of the writ petition, I deny and dispute the same.

16C. I submit that the petitioners have failed to make out a case for re-opening or re-appointing Justice Mukherjee Commission. I further say that Justice Mukherjee Commission after thorough, protracted and painstaking efforts completed its enquiry/investigation and, thereafter, submitted its report. All out efforts were made by Justice Mukherjee Commission to unearth the truth. In the premises nothing further remains to be done in the instant case. In the facts and circumstances of this case the present writ petition is liable to be dismissed.

17. The statement contained in paragraphs of the Affidavit-in-Opposition to the writ petition of the petitioners are true to my knowledge and derived from the available relevant records and rests are my respectful submission before this Hon'ble Court.

Prepared in my office

The deponent is known to me

Advocate

Clerk to

Solemnly affirmed before me on this
day of 2010.

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DISTRICT : HOWRAH

IN THE HIGH COURT AT
CALCUTTA
CONSTITUTIONAL WRIT
JURISDICTION
(APPELLATE SIDE)

W.P NO.8215(W) OF :2008

IN THE MATTER OF :

An application under Article 226 of
the Constitution of India;

-And-

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU &
ANR

PETITIONERS

-Verus-

UNION OF INDIA & ORS

RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON
BEHALF OF THE RESPONDENTS

Mr Tarun Kumar Ghosh
Advocate
Bar Association Room No.2,
High Court, Calcutta,
Office at:

10-A, Dr. Kartick Bose Street,
1st Floor Kolkata – 700009
Phone 2350-9128 & 2351-2988

1. **Appointment of Commission-** (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if resolution in this behalf is passed by ([Note : Subs. by Act 19 of 1990, sec 2, for certain words.] each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and with such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.

Provided that where any such Commission has been appointed to inquire into any matter-

a. by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning.

b. by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

2. The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one members, one of them may be appointed as the Chairman thereof.

3. [Note: Ins by Act 79 of 1971, sec.5.] The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

4. The appropriate Government shall cause to be laid before ([Note : Subs. by Act 19 of 1990, sec 2, for certain words.] each House of Parliament, or, as the case may be, the Legislature of the State), the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government
[Note: Sub section (5) and (6) omitted by Act 19 of 1990, sec. 2, which were inserted by Act 5 of 1986, sec. 2 (w.e.f. 14-5-1986).

Shakeel Mohammed Akhter
Advocate

3508
Chamber : C/o. Somenath Bose,
Advocate,
6, Old Post Office Street,
Ground Floor, Room No.50
Kolkata - 700001.
Mob : 9903321066

Dated : 23.2.2011

To
The Secretary,
Government of India,
Ministry of Home Affairs,
Lok Nayak Bhavan, Khan Market,
New Delhi-110003.

Dear Sir,

Re : W.P. No. 8215(W) of 2008
(Subhash Chandra Basu & Anr. -Vs- UOI & Ors.)

Enclosed please find a copy of the affidavit-in-opposition to the writ petition in the above matter with annexure thereto drawn by me and settled by Mr. Somenath Bose, Senior Central Government Counsel as per the instructions and records made available to us by Sm. Lalit Prabha Shrivastava, the Under Secretary, Government of India in the Ministry of Home Affairs.

Please note that the said affidavit has been affirmed by Sm. Lalit Prabha Shrivastava in Court this day and since the time to file the said affidavit, as I understand, has elapsed the same will be filed in Court with leave therefor.

Enclo : As above.

Yours faithfully,

Shakeel Mohammed Akhter
Advocate.

Copy to :
Ms. S. Bhattacharyya,
Sr. Central Government Advocate
and Incharge, Government of India,
Ministry of Law & Justice,
Kolkata Branch Secretariat,
11, Strand Road, Kolkata-700001.

25/2/11

So Ccdn)

District : Howrah

*filed
on 24/2/11*

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

W. P. No. 8215(W) of 2008

IN THE MATTER OF:

An application under Article 226 of the
Constitution of India;

And

IN THE MATTER OF:

Sri Subhas Chandra Basu & Anr.

.....Petitioners

Versus

Union of India & Ors.

....Respondents

Affidavit-in-opposition on behalf of
the respondents to the writ petition in the above matter

Attidavit filed
on 24/2/2011

I, Lalit Prabha Shrivastava, aged about 58 years, wife of Shri Dinesh Kumar Shrivastava, working for gains at Lok Nayak Bhawan, Khan Market New Delhi-110 003 do hereby solemnly affirm and say as follows:

1. I am the Under Secretary to the Government of India in the Ministry of Home Affairs and have made myself acquainted with the facts and circumstances of the case and am authorized and competent to affirm this affidavit on behalf of all the respondents.

2. I have read a copy of the writ petition being W. P. No. 8215(W) of 2008 in the above matter, for short, "the said petition" and have understood the meaning, purport and scope thereof. Save what would appear from records and save what have been specifically admitted herein I deny and dispute all allegations and/or contentions contained in the said petition.

3. By virtue of the letters both dated 15th May, 2006 of the Hon'ble Home Minister, addressed to the Hon'ble Speaker, Lok Sabha and the Hon'ble Chairman, Rajya Sabha forwarding therewith the Action Taken Report in the form of a Memorandum of the Central Government on the report of Justice Manoj Kumar Mukherjee Commission the Central Government having laid the same before both the Houses of Parliament on 17th May, 2006 as per the requirements of the provisions of Section 3(4) of the Commissions of Inquiry Act, 1952 the matter in issue being subject matter of the Parliament the said petition is barred by the provisions of Article 122 of the Constitution of India

and as such is not maintainable and the petitioners is not entitled to any relief whatsoever as sought for in the said petition.

4. Save what would appear from records and save what are specifically admitted herein I make no admissions with regard to the statements made in paragraph Nos. 1 and 2 of the said petition.

5. Save what would appear from records and save what are specifically admitted herein I deny and dispute all contentions contained in paragraph 3 of the said petition and say:

(A) The disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the beginning. The Government of India has, so far, appointed three Committees/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in the year 1956. The Committee examined 67 witnesses. Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.

- B) The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.
- (C) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order / judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.
- (D) Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(E) The Justice Mukherjee Commission of Inquiry, (JUSTICE MUKHERJEE COMMISSION OF INQUIRY), submitted its Report on 8th November, 2005 on the following terms of references and concluded the following:-

Sl. No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas Chandra Bose is dead or alive;	Netaji Subhas Chandra Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged.
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;

The Commission also observed as under:-

"5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings—that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged".

(F) The report of the JUSTICE MUKHERJEE COMMISSION OF INQUIRY was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JUSTICE MUKHERJEE COMMISSION OF INQUIRY that Netaji did not die in the plane crash are based on non-availability of "clinching evidence". Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the

Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JUSTICE MUKHERJEE COMMISSION OF INQUIRY.

- (G) The report of the JUSTICE MUKHERJEE COMMISSION OF INQUIRY was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

“2. The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that :-

- a) Netaji did not die in the plane crash; and
- b) The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956”.

- (H) It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there are no good reasons or evidence to indicate that Netaji did not die in the plane

crash on 18th August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the recommendations/findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-4(G) above for the Government not to accept the report of JUSTICE MUKHERJEE COMMISSION OF INQUIRY. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

6. With regard to the statement made in paragraphs 4, 5 and 6 of the said petition, I state that those are matters of record and save and except what appears from the records all allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me. With further reference to the quotations of the Hon'ble Prime Minister as reported

in the report of the Parliament dated 20th August, 1976 I say that by omitting to quote the last six lines of the statements of Shri Morarji Desai, the erstwhile Prime Minister the petitioners have sought to mislead this Hon'ble Court. A Photostat copy of the said report dated 20th August, 1976 is annexed hereto and marked with the letter-"R/1".

7. Save what would appear from records and save what are specifically admitted herein I make no admission with regard to the statements made in paragraph 7 of the said petition, which are irrelevant for resolution of the present controversy and say that following the recommendations of the erstwhile Hon'ble Prime Minister to posthumously award Bharat Ratna to Netaji by an official communiqué dated January 22, 1992 the President's Secretariat informed the approval of the Hon'ble President thereto, however, when communicated, expressing her reservation to receive posthumous award of Bharat Ratna on behalf of Netaji Mrs. Anita Pfaff, daughter of Netaji having declined to receive the same the Government of India did not issue any notification for the purpose and accordingly the matter was closed.

8. Save what would appear from records and save what are specifically admitted herein I make no admission with regard to any contentions contained in paragraphs 8, 9, 10, 11, 12 and 12.1 of the said petition.

9. I deny that the Central Government had rejected the findings of the Justice Mukherjee Commission of Inquiry on 17.5.2006 without assigning

any reasons as alleged in paragraph 13, 14, 14.1 and 14.2 of the said petition or at all and say that the report of Justice Mukherjee Commission of Inquiry has been thoroughly examined in all appropriate stages right from file formation to the Cabinet level till the same was laid before the Parliament with the Action Taken Report as above thereon reflecting the observations of the Government for necessary decision of the Parliament. With further reference thereto I say that the matter was thoroughly discussed in the Parliament but no decision of the Parliament was communicated to the Government directing any further action thereon. With regard to the spending of huge money from the public exchequer I say that in view of the order made by this Hon'ble Court on a writ petition moved by a public spirited individual, considering all relevant aspects thereto the Government of India issued a notification informing the engagement of Justice Mukherjee Commission of Inquiry referring the terms of inquiry thereto. The Commission worked for six years and six months and submitted the report on inquiry and as such the Government had to spend huge sum on the said score from the public exchequer.

10. Save what would appear from records and save what are specifically admitted herein I deny and dispute all allegations made in paragraph 15 of the said petition. It is categorically denied that the relevant documents or records relating to the disappearance of Netaji were not made accessible to the Justice Mukherjee Commission of inquiry or at all and say that in the entire report itself there is no mention with regard thereto. With further

reference thereto I say that the Commission visited various countries, namely, U.K., Japan, Taiwan, Bangkok and Russian Federation and examined a large numbers of witnesses and also examined 308 exhibits. With regard to the secret and top secret documents or records I say that the same being matters relating to the appointment of Inquiry Commission on the death of Netaji and on conferment of posthumous award of Bharat Ratna on Netaji and are irrelevant for the purpose of inquiry on disappearance of Netaji and as such barring those all relevant documents were provided to the Commission as and when required.

11. Save what would appear from records I make no admission with regard to the statements made in paragraphs 16, 16.1, 16.2 and 16.3 of the said petition.

12. I deny and dispute that the records were not made available to the Commission as alleged in paragraph 16.4 of the said petition or at all and say that in para 2.6 of its Report, the Commission itself has stated that out of 202 (two hundred and two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to the Commission.

13. I deny and dispute that the Central Government did with-hold any relevant document, file or record relating to the alleged death or

disappearance of Netaji in 1945 before the Commission under the garb or veil of the security of the nation as alleged in paragraph 16.5 of the said petition or that in view of the preliminary objection taken hereinabove any document is required to be produced before this Hon'ble Court and also before the Commission or there is any necessity or scope to reopen or reappoint the said Commission as alleged therein or at all and say that the said contentions are wholly misconceived and not tenable in law.

14. Save what would appear from records and save what are specifically admitted herein I deny and dispute the submissions made in paragraph 17 of the said petition and say that the earlier two Committee/Commission namely Shah Nawaz Committee and Khosla Commission have stated that Netaji Subhash Chandra Bose died in the plane crash at Taihoku Airport on 18th August, 1945 and the Government of India in turn accepted the findings of the said Committee/Commission.

15. With regard to the statements made in paragraph 18 of the said petition, I say that the representation dated 11.3.2008 has not been received in the concerned Section/Division of the Ministry of Home Affairs. In view of what has been stated hereinabove, I deny that there is any scope for reappointment or reopening of the Mukherjee Commission.

16. That the submissions made in paragraph 19 of the said petition are misconceived and not in terra firma and submit that in view of the

preliminary objection taken hereinabove the said petition is not maintainable. With further reference thereto I say that the Central Government reserves its right to make further submissions thereon at the hearing of the said petition or as and when necessary.

17. Save what would appear from records and save what are specifically admitted herein I deny and dispute the contentions contained in paragraphs 20 and 21 of the said petition and repeat and reiterate that upon due deliberations thereon recording its observations in the action Taken Report the Central Government has laid the report of the justice Mukherjee Commission of Inquiry before both the Houses of Parliament as a repository of the legislature and since the matter has been laid on the table of the Parliament the issue pertaining to the death, cause of death and/or disappearance of Netaji is subject matter being exclusively in the domain of the Parliament the petitioners are debarred from rusting the jurisdiction of this Hon'ble Court for waiver of the Rule of Standing and as such the same is liable to be dismissed.

18. With reference to the allegations made in paragraph 22 of the writ petition, I submit that inspite of best efforts made by different departments of the Government no records could be found on the basis of which the then Hon'ble Prime Minister of India Late Morarji Desai made the statement on the floor of Parliament on 28th August, 1978.

19. With reference to the allegations made in paragraphs 23 and 24 of the said petition I deny and dispute the same. I submit that Justice Mukherjee Commission had complete freedom to visit any country if wanted for the purpose of the enquiry or investigation. In fact the commission went to several places in India and abroad and conducted necessary enquiry and investigation within the country and outside India. After completion of their enquiry and investigation, Justice Mukherjee Commission submitted its Report. In the circumstances there is no need for further enquiry. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

20. With regard to the allegations made in paragraph 25 of the said petition, I state that the Government of India has accepted the findings of the Shah Nawaz Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18th August, 1945. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

21. With reference to the allegations made in paragraphs 26 and 27 of the said petition, I deny and dispute the same. I particularly deny the allegation that the object of rejection of said Justice Mukherjee Commission Report is absolutely illegal and against the said provision of law as alleged or at all. I

crave leave to make further submissions thereon during the argument or as and when necessary.

22. I deny and dispute that the fundamental right of the petitioners guaranteed under Article 14 and 19(1) of the Constitution of India has been violated as alleged in paragraph 28 of the said petition or at all and say that the report of Justice Mukherjee Commission of Enquiry was thoroughly examined but it was observed that the Commission's Inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18th August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple. Justice Mukherjee Commission's, Report therefore, does not conclusively disprove the plane crash in the light of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

23. I deny and dispute the allegations made in paragraphs 29, 30 and 31 of the said petition as alleged or at all.

24. I submit that the said petition is speculative, misconceived, harassing and made in the pursuit of publicity and has been made in the gross abuse of the process of Court and as such liable to be dismissed.

25. That the statement made in paragraphs 1 and 2 of the foregoing affidavit are true to my knowledge, those made in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 20, 21, 22 and 23 are true to my information derived from records which I verily believe to be true and rest thereof are my humble submissions before this Hon'ble Court.

Prepared in my office



Advocate

The deponent is known to me

Clerk to: Mr.



Advocate

Solemnly affirmed before me

on this 23rd day of February,

2011.



Commissioner

[Shri Vasant Sathe]

I find sometimes a contradiction in our behaviour. Statues or portraits are normally unveiled of only those who are no more with us. It is very seldom, except in the South, that a statue is unveiled of a person who is still alive. Normally it is not done. In the present case, on the one hand, we have unveiled the statues and portraits; on the other hand, we are maintaining that he is still alive. I think there is some contradiction which needs reconciliation.

If, for any reason, it is felt that the recommendation or report of the Commission is wrong, throw it out and have another fresh enquiry. In all seriousness, I would submit to Morarjibhai that the only authority on this subject, who can go into it, who can really go to the areas where there is a likelihood of finding Subhas Chandra Bose is Prof. Samar Guha. He has photographs with him. I think, there should be a one-man Commission I am saying it in all humility and seriousness and that should be headed by Prof. Samar Guha. He can take all the assistance, the entire Government machinery can be placed at his disposal and he might even take the assistance of your scientific astrologer. There is substance in astrology and may be that it would help. But if any one can find Netaji Subhas Chandra Bose for us and if on any one's behalf supposing Netaji has taken sanyas, as the Astrologer says, and even then if any one can persuade him to come even in sanyas at least to give darshan to his people, it is only Prof. Samar Guha and nobody else. He has such a devotion and completed identification that you cannot find in anyone else. I would request the hon. Prime Minister, Shri Morarji Desai to appoint a one-man Commission headed by Prof. Samar Guha, give him all the assistance than one can think of. Let him try his best to bring Subhas Chandra Bose to this land

THE PRIME MINISTER (SHRI MORARJI DESAI): Mr. Chairman, Sir, I may differ sometimes from hon. friend, Mr. Samar Guha, but I can never doubt, even in my sleep, his sincerity. I have great admiration for the dedication with which he is pursuing this cause and yet we have to be realistic in this matter.

There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku air-field during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee of enquiry headed by Shri G. D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of witnesses have been noticed. Some further contemporary official documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive. At the same time, Government feels that no useful purpose would be served by having any further inquiry. I hope that in the light of this statement, my hon. friend will withdraw his motion.

PROF. SAMAR GUHA (Contd.): Sir, Today is a great day for the whole Indian people, because a mortal sin, a treacherous crime that was committed against the epic hero of India freedom has been undone. If I say that Netaji was given burial, out of political conspiracy, it would not be an exaggeration. Although there was not an iota of doubt or any positive proof to the contrary that the plane crash was nothing but fake, and the alleged crash did not involve Netaji

I congratulate the Prime Minister on behalf of the Indian people, the Government as well, for the very bold and courageous steps and the decision that they have taken today. It is not an easy matter to undo the findings of the two Inquiries.

I also congratulate the representatives of all the parties in this House, all of whom, about 25 of them, who spoke in this House on earlier occasions on this resolution and who lent their unanimous support to the demand to undo the Khosla Commission's Report.

I would also remind this House that earlier about 400 members of both the Houses, this House and the other House, had in a joint memorandum urged upon the Government for a fresh inquiry on Netaji on the basis of which the Khosla Commission was set up.

It is a matter of extreme regret that it required three decades for our nation to undo, I would say, the mischief that was done against the revolutionary pilgrime of India. Would there have been the freedom, as you call it, would the British imperialists have quit India so precipitously being the victor of the last War if there had not been a fatal blow by Netaji Subhas Chandra Bose? What now I would say is not my word, but is the word of Lord Attlee who, as a private citizen, came to India. It has been quoted by Shri R. C. Mazumdar in his book, "History of Indian Independence". He was asked "Why did the British quit India so precipitously?". Lord Attlee said: "Because of the activities of Netaji Subhas Chandra Bose".

It is now the accepted fact of history that Mahatma Gandhi prepared the background of Indian freedom and it is Netaji Subhas Chandra Bose who achieved it. But not the freedom as you find today. It is not the freedom of either of the dream of Mahatma Gandhi or Netaji Subhas Chandra Bose.

I am not angry like Mr. Dranath Basu or anybody for finding the name of Netaji in Doordarshan on the 15th August. I am very glad that they did mention the name of Netaji on the 15th August because anybody who knows the real meaning of the Independence that we achieved on the 15th August would not mind it. At least, I would not attend any function anywhere for even a day on the 15th August. It may be, personally, to me, it is a day of national betrayal. I remember Mahatma Gandhi, remained at Balighata, at the mid-night of 15th August and he did not bless, even send a message of congratulations on this kind of Independence that we achieved. Therefore, I was not at all worried about it. I was not that his name was not mentioned on the 15th August because he should be mentioned either on 26th January or 21st October, the days which Netaji declared the Proclamation of Government of India and the start of the war of Indian liberation against British imperialists.

Today, I express my gratitude to the Prime Minister because today he has launched a crusade that in my humble view is trying to conduct on behalf of the people of India at least to undo the official and legally Netaji declared dead. How, by undoing the findings of the two Reports, this much we have achieved today, Netaji is neither legally nor officially dead.

What happened to him? There will be any useful thing that will be served by having a fresh enquiry. It is not a question which I will ask later. But I want to draw attention of the Prime Minister to the fact that what has been done by the Government has been done by himself. He himself republished his own findings in a recent book in Calcutta. There was the report of the Khosla Commission and, after the publication of this report, he published a book called "Days of Netaji". This is r

District : Howrah

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W. P. No. 8215(W) of 2008

IN THE MATTER OF:

An application under Article 226 of the
Constitution of India;

And

IN THE MATTER OF:

Sri Subhas Chandra Basu & Anr.

.....Petitioners

Versus

Union of India & Ors.

....Respondents

Affidavit-in-Opposition

Shakeel Mohammed Akhter,
Advocate,
C/o. Somenath Bose, Advocate,
6, Old Post Office Street,
Ground Floor, Room No. 50,
Kolkata-700001.

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No. 12014/6/2008 - Cdn.
Govt. of India / Ministry of Home Affairs
IS-II Division



c/o : Office of
Additional Solicitor General,
(Sh. Farooq M. Razak)
Kalkatta,
19, Balu Hakak Lane
Park Circus,
Kalkatta - 700 017
Dated : 23/2/2011

To
Ms. S. Bhattacharya,
Jt. Secretary & Legal Adviser,
Ministry of Law & Justice,
Deptt. of Legal Affairs, Branch Secy.
11, Strand Road, Kalkatta - 700001

Subject: W.P. No 8215 (w)/08 filed by Sh. Subash Chandra Bose
& others.

Madam,

It is directed to say that the three writ petitions on the disappearance of Netaji Subash Chandra Bose and bringing back the ashes kept in Renkaji Temple, including the above mentioned writ petition are to be heard in The Hon'ble High Court on 24th Feb. 2011, the date specifically fixed for the purpose. The Counter Affidavit in the above said petition was finalized by Sh. Tarun Kumar Ghosh, CGSC. During the conference with ASG in the evening of 22nd Feb. 11, he was not available and was given to understand that he is no more on the panel of govt. counsels. It is therefore requested that another govt. counsel be appointed immediately to represent UOI in the matter and this Ministry may be informed immediately under intimation to Ld. ASG (Sh. Razak) Kalkatta.

Yours Faithfully,

h. p. shrivastava
23/2/11

(Sd/- H. P. Shrivastava)
Under Secretary to Govt. of India

Copy to : Shri Farooq M. Razak, ASG, Kalkatta,
19, Balu Hakak Lane, Park Circus, Kalkatta 700001.

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By Speed Post.

No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 4th March, 2011.

7th

- 8 MAR 2011

R+I to issue release

Public Release

8/3/2011

8 MAR 2011

To

हस्ताक्षर/Intls.
श्री तारा दे. R&I/LNB

Additional Govt. Advocate
Ministry of Law and Justice,
Deptt. of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd Floor,
Kolkata - 700 001

Sub : Calcutta High Court - Discussions on 3 Writ Petition
Nos.2003/2006, 27541/2006 & 8251/2008 on the
disappearance of Netaji Subhas Chandra Bose.

I am directed to say that the three Writ Petitions on the above mentioned subject were heard in the Calcutta High Court on 24th February, 2011. The learned Court also heard the Report of the Justice Mukherjee Commission of Inquiry (JMCI) that was laid on the table of the house on 17th May, 2006. In para-2.10.2 of the Report of the JMCI, (copy of page 38 of the Report enclosed), it has been mentioned that deponents and their Counsels were to make their submissions on the issues before the Commission in response thereto..... Shri Tarakeswar Pal, the learned Counsel appearing for Government of India and deponents..... made their respective submissions in details. This Ministry has not been able to find any record to confirm that if at any given point of time Shri Tarakeswar Pal was appointed as the Govt. of India Counsel to make its submissions before the JMCI.

2. An Affidavit has to be filed before the Hon'ble Court, Kolkata immediately as to whether Union of India appointed Shri Tarakeswar Pal as the Government Counsel to represent Government of India before the Commission. Since Ministry of Home Affairs has so far not been able to trace any record to show that Ministry had appointed Shri Tarakeswar Pal to represent Government of India, the Ministry of Law and Justice, Branch Secretariat, Kolkata is requested to check its record and inform this Ministry by 16th March, 2011 if they have any papers on the appointment of Shri Tarakeswar Pal as Government Counsel to represent Union of India before the JMCI.

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. 24617196

2.10.2 Keeping in view the above yardstick relating to reception of evidence in this inquiry, the deponents and/or their Counsel were asked to make their submissions on the issues (the terms of reference) before the Commission. In response thereto Ms. Chandreyee Alam, Shri Keshab Bhattacharjee, Shri Rudrajyoti Bhattacharjee, Shri Supriyo Bose, the learned Counsel appearing for some of the deponents, Shri Tarakeswar Pal, - the learned Counsel appearing for Government of India and deponents Dr. Madhusudan Pal, Professor Nandalal Chakrabarti, Dr. Susanta Mitra, Shri Kanailal Basu, Dr. Bijoy Ketan Mukherjee, Shri Sukhendu Kumar Baur, Shri Subhas Ranjan Dasgupta and Shri Satyabrata Tapadar made their respective submissions in detail. Some of them have filed written arguments also to supplement their oral submissions.

Consequent upon the conclusion of the arguments the findings on the terms of reference are to be recorded and it will be apposite to record the same at appropriate stages.

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Ministry of Home Affairs
(Internal Security.II Division)

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There are 3 writ petitions pending for official hearing in the Kolkata High Court (Nos.2003/2006, 8215/2008, 27541/2006) relating to Netaji Subhash Chandra Bose. Addl. Solicitor General informed the undersigned that the hearing of the case is scheduled to take place on 24th Feb., 2011. Two Supplementary Affidavits and one Counter Affidavit is ready for affirmation after obtaining the comments of Ministry of External Affairs, Ministry of Parliamentary Affairs, Netaji Research Bureau and Prime Minister's Office.

2. Since the affidavits have to be affirmed before 24th February, 2011, it is proposed that Smt. L.P. Shrivastava, Under Secretary dealing with the subject matter be deputed for conference with Addl. Solicitor General at Kolkata and affirming the affidavits in Kolkata High Court. ASG desired that the officer may reach Kolkata on 22nd February, 2011 and attend the hearing also on 24th February, 2011.

3. For approval.

(K. Muralidharan)
Deputy Secretary (S)
21.02.2011

JS(IS.II) - on tour abroad.

Secretary (IS)

DS(S)

Amal

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to (cd-2)

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No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 7th March, 2011:

Office Memorandum

Sub : Calcutta High Court – Discussions on 3 Writ Petition
Nos.2003/2006, 27541/2006 & 8251/2008 on the
disappearance of Netaji Subhas Chandra Bose.

I am directed to say that the three Writ Petitions on the above mentioned subject were heard in the Calcutta High Court on 24th February, 2011. The learned Court also heard the Report of the Justice Mukherjee Commission of Inquiry (JMCI) that was laid on the table of the house on 17th May, 2006. In para-2.10.2 of the Report of the JMCI, (copy of page 38 of the Report enclosed), it has been mentioned that deponents and their Counsels were to make their submissions on the issues before the Commission in response thereto..... Shri Tarakeswar Pal, the learned Counsel appearing for Government of India and deponents..... made their respective submissions in details. This Ministry has not been able to find any record to confirm that if at any given point of time Shri Tarakeswar Pal was appointed as the Govt. of India Counsel to make its submissions before the JMCI.

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No.12014/12/2007-Cdn.
Government of India
Ministry of Home Affairs
IS- II Division

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi,
Dated the 7th March, 2011.

Office Memorandum

Sub : Calcutta High Court – Discussions on 3 Writ Petition
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2. An Affidavit has to be filed before the Hon'ble Court, Kolkata immediately as to whether Union of India appointed Shri Tarakeswar Pal as the Government Counsel to represent Government of India before the Commission. Since Ministry of Home Affairs has so far not been able to trace any record to show that Ministry had appointed Shri Tarakeswar Pal to represent Government of India, the Ministry of Law and Justice is requested to check its record and inform this Ministry by 16th March, 2011 if they have any papers on the appointment of Shri Tarakeswar Pal as Government Counsel to represent Union of India before the JMCI.

(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel/ 24617196

Shri M A Khan Yusufi,
Joint Secretary & Law Adviser
Ministry of Law & Justice
Shastri Bhawan,
New Delhi.

ISSUED vide

PB

1/2011

Ruchica

8/3/2011.

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(K Muralidharan)
Deputy Secretary to the Govt. of India
Tel. 24617196

Shri M A Khan Yusufi,
Joint Secretary & Law Adviser
Ministry of Law & Justice
Shastri Bhawan,
New Delhi.

Issued vide

PB

1/2011

Ruchica

8/3/2011.

2.10.2 Keeping in view the above yardstick relating to reception of evidence in this inquiry, the deponents and/or their Counsel were asked to make their submissions on the issues (the terms of reference) before the Commission. In response thereto Ms. Chandreyee Alam, Shri Keshab Bhattacharjee, Shri Rudrajyoti Bhattacharjee, Shri Supriyo Bose, the learned Counsel appearing for some of the deponents, Shri Tarakeswar Pal, - the learned Counsel appearing for Government of India and deponents Dr. Madhusudan Pal, Professor Nandalal Chakrabarti, Dr. Susanta Mitra, Shri Kanailal Basu, Dr. Bijoy Ketan Mukherjee, Shri Sukhendu Kumar Baur, Shri Subhas Ranjan Dasgupta and Shri Satyabrata Tapadar made their respective submissions in detail. Some of them have filed written arguments also to supplement their oral submissions.

Consequent upon the conclusion of the arguments the findings on the terms of reference are to be recorded and it will be apposite to record the same at appropriate stages.

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Consequent upon the conclusion of the arguments the findings on the terms of reference are to be recorded and it will be apposite to record the same at appropriate stages.

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(7)

S. no. 3

Most Immediate

By FAX and Speed Post
No.I.12014/24/2000-IS(D.III)

Dated, the 8th Nov., 2000.

To : Shri Tarakeswar Pal, Sr. Advocate,
"PURNASASI" 33, Ashoke Avenue,
Near Navanir, Calcutta-700 040.
FAX No.033-2482313.

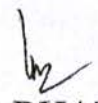
Subject: **Engagement of a Counsel to represent the Ministry of Home Affairs before Hon'ble Mr. Justice Mukherjee Commission of Inquiry which is inquiring into the alleged disappearance of Netaji Subhas Chandra Bose.**

Sir,

I am directed to refer to the Ministry of Law, Justice and CA (Department of Legal Affairs), Branch Secretariat, Calcutta, letter No.152/LC/2000 dated the 7th November, 2000 addressed to this Ministry with a copy endorsed to you on the above subject and to say that you have been engaged to appear and plead on behalf of the Ministry of Home Affairs at the existing terms of the Central/State Government Panel before the Justice Mukherjee Commission of Inquiry. A representative of this Ministry will be shortly meeting you at Calcutta to brief you in the matter with relevant papers/documents. You are, however, requested to let this Ministry know the details of documents etc. required by you so that the same could be made available through this Ministry's representative.

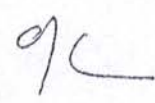
2. The next hearing of the Commission is to be held on 23.11.2000 at Calcutta and your reply in the matter is therefore immediately needed so that you can make an effective appearance before it. The same may be sent at FAX No.3015750 or 3017763.

Yours faithfully,

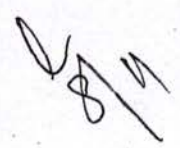


(V.P. BHATIA)

Under Secretary to the Government of India.



Contd.2/--



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By Speed Post
F.A. No. 3015750

3017763

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & C.A.
Department of Legal Affairs,
Branch Secretariat
4, KIRAN SHANKAR ROY ROAD,
2nd Floor, Calcutta-70001
Phone Nos: 2486515/2489625.

No. 152/LC/2000/

To
Sri V.P. Bhatia
Under Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.

Dated: 7.11.

2000

15(DIV)
Sub: Engagement of a Counsel to represent the
Ministry of Home Affairs before Hon'ble
Mr. Justice Mukherjee Commission of Inquiry
which is enquiring into the alleged
disappearance of Netaji Subhas Chandra Bose

Ref: Your letter No. I.12014/24/2000-IS(D. III)
dt. 3rd. Nov. 2000.

Sir,

Please note that Sri TARAKESWAR PAL Sr. Advocate, High Court, Calcutta Bar Association Room No.5, High Court Building Calcutta Ph: 248-3190
FAX No. (033) 248-2313.

He has been engaged in the above matter to appear and plead on behalf of the Department at the existing terms of the Central/State Government Panel.

You are therefore requested to contact the Learned Counsel with all relevant papers and files for preparation of the case on behalf of the Department.

A copy of the engagement letter annexed hereto may please be made over to the Learned Counsel.

~~All papers sent to this office are returned.~~

Enclo: As above.

Yours faithfully,

(H.D. RATHOD.)

Senior Central Government Advocate & Incharge.

Copy to SRI - Tarakeswar Pal; Sr. Advocate, "PURNABASI" 33, Ashoke Avenue
Near Navanir, Calcutta-700 040 PH. 471-0592(R)

He is requested to conduct the case on behalf of the Department, as per the Departmental instructions. All Fee Bills may be submitted to the Department directly for payment as per approved scheduled rates.

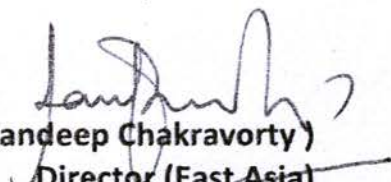
(H. D. RATHOD.)

Ministry of External Affairs
(East Asia Division)

Sub: WP No.8215(W)/08 filled by Shri Subhash Chandra Basu and Ors Vs. Union of India & Ors.

-:0000:-


We have perused the Draft Affidavit faxed along with O.M. No.12014/6/2008-Cdn dated 9th February, 2011. This Ministry agrees with the contents of the Draft Affidavit and there are no additional comments to offer. The Ministry of External Affairs does not propose to file a separate Affidavit in this case.


(Sandeep Chakravorty)
Director (East Asia)
Tel: 23012536
Fax: 23016514

- 1) **Shri S.C. Shivaji Rao**, Deputy Secretary(L), Ministry of Home Affairs, IS-II Division, Lok Nayak Bhavan, 9th Floor, 'C' Wing, Room No.8, New Delhi
- ✓ 2) **Shri K. Muralidharan**, DS(IS-II), Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi

MEA U.O. No.25/4/NGO-VOI-XVII

19 February 2011


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**F.NO. 15(9)/2010-ME
GOVERNMENT OF INDIA
MINISTRY OF PARLIAMENTARY AFFAIRS**

**94-A, Parliament House,
New Delhi – 110001**

Dated: 15.04.2011

OFFICE MEMORANDUM

Subject: WP No. 8215(W)/08-Shri Subhash Chandra Basu & Ors. Vs UOI in the High Court at Calcutta reg: Reappointment or reopening of Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance or Netaji Subhash Chandra Bose.

The undersigned is directed to refer to subject mentioned above and to enclose a copy of Ministry of Home Affairs OM No. 12014/5/2007-Cdn, dated 04.04.2011 wherein they requested for answer as to whether discussions on report of the Justice Mukharjee Commission Inquiry held in Parliament are challengeable in court of law when no decision has been taken on it. Lok Sabha Secretariat is requested to furnish their comments on the matter latest by 19th April, 2011.

Encls. as above.


(DEVASHIS BOSE)

Under Secretary to the Govt. of India
Phone:23034732

Lok Sabha Secretariat
(Shri Ravindra Garimella, Director)
107, Parliament House,
New Delhi.

Copy to:-

- ✓ **Shri K. Muralidharan, Deputy Secretary, Ministry of Home Affairs, Lok Nayak Bhavan, 9th Floor, 'C' Wing, Room No.8, New Delhi with reference to his OM No. 12014/5/2007-Cdn, dated 04.04.2011 information.**

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ANNEXURE-P-23

Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

Calcutta High Court
Calcutta High Court
Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013
Author: Banerjee
Form No. J.(2)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

Present :

The Hon'ble Mr. Justice Ashim Kumar Banerjee And

The Hon'ble Justice Dr. Mrinal Kanti Chaudhuri W.P. No. 2003 of 2006

SHRI RUDRA JYOTI BHATTACHARJEE & ORS.

VS.

UNION OF INDIA

ALONG WITH

W.P. No. 27541 (W) of 2006

ASHIM KR. GANGULY & ANR.

VS.

UNION OF INDIA

AND

W.P. No. 8215 (W) of 2008

SUBHAS CHANDRA BOSE

VS.

UNION OF INDIA & ANR.

For the Appellants : Mr. Keshav Bhattacharjee, Advocate (in WP 2003/06) Mr. Jagabandhu Ray, Advocate
Ms. Debjani Ghosal, Advocate

For the Appellants : Mr. Ashim Kumar Ganguly, (In person) (in WP 27541 (W)/06)

For the Appellants : Mr. Subhas Chandra Bose, (In person) (in WP 8215 (W)/08)

Ors vs Union Of India Along With W.P. No. ... on 19 September, 2013

For added respondents : Mr. Rudrajyoti Bhattacharjee, Advocate (in WP 27541 (W)/06) Ms. Debjani Ghosal, Advocate For Union of India : Mr. R.N. Das, Senior Advocate Mr. Somenath Bose, Advocate

Mr. Md. Nizammudin, Advocate

Mr. Ashis Kr. Roy, Advocate

Heard on : August 19, 21, 22, 29 and September 3, 2013.

Judgment on : September 19, 2013. ASHIM KUMAR BANERJEE, J.

PREFACE :

Indian freedom struggle passed through violent and non-violent movement from time to time. We do not wish to enter into a debate, who should be given the credit for our freedom, the non-violent movement under the leadership of the father of the nation or the violent one. If people would like to give credit to the non-violent movement they would have sound logic behind it. Yet, no one could ignore the relentless fight of the youths of India to put the British administration in difficulty many a times through violent movement, rather it was a fall out of continuous oppression and torture that the British administration inflicted on our predecessor. Netaji Subhas Chandra Bose was one of the pioneers of our non-violent movement and ardent follower of the father of the nation. However, in 1939 he left the Congress and organized the Indian youth to fight out the British administration. The Second World War helped him in this regard when he joined the opposing force of British with his disciplined force commonly known as 'INA'. He left the country and went underground and fought the British from outside. We ultimately got freedom in 1947. Sixty-six years have passed thereafter. We feel ashamed, we do not know his whereabouts. By the long passage of time, any prudent man would agree, he is no more in this world. How did he die? What did he do since we last heard him on the Radio? Being the citizen of the world's largest democracy, each one of us has a birth right to ask the Government to let us know about him and how he died. Three Commissions could not answer the query, was the Government sincere? or despite their best efforts and sincerity they could not find out the cause. With this mindset, we proceed to dispose of the present litigation pertaining to our great Hero.

BACKDROP :

After the India became independent the democratic Government of the country appointed a Commission called 'Shah Nawaz Committee' in April 1956 to find out the whereabouts of Netaji. The 'Shah Nawaz Committee' could not effectively answer the reference. The Government again appointed 'Khosla Commission of enquiry' in 1970 to enquire into and report to the Government on the circumstances concerning the departure of Netaji from Bangkok on or about August 18, 1945 and reported death in the plane crash and the subsequent development thereto. The second Commission also failed to answer the reference. The Government did not proceed any further. This caused annoyance to the members of public. On January 22, 1992 the President of India decided to award Bharat Ratna to Netaji posthumously that created a tremendous discontent amongst the members of the public as the Government took Netaji to be dead. Sri Bijon Ghosh, an advocate of this Court filed a Public Interest Litigation that ultimately reached the Apex Court. The Apex Court however recorded the concession of the Central Government who ultimately dropped the idea of giving the posthumous award to Netaji. The Apex Court recorded, "since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled". The Government had to backtrack and withdraw the notification. Subsequently, another Advocate of this Court Mr. Rudrajyoti Bhattacharjee along with another, filed Public Interest Litigation being WP No. 281 of 1998 inter alia praying for various directions on the alleged research being conducted by Netaji Research Bureau and for classification and disclosure of all documents relating to Netaji as also his nexus in the Second World War. The Division Bench of our Court disposed of the writ petition by directing the respondent administration to launch a vigorous enquiry in accordance with law by appointing a

Commission of Enquiry to find out whether he was dead or alive, and in case, he was dead, the cause of death as also to find out, whether the ashes that was kept at Renkoji Temple at Japan would belong to Netaji or not. The administration accepted the said order and appointed one- man enquiry Commission under the aegis of Monoj Kumar Mukherjee, a former Judge of the Apex Court to answer the following questions:

- (a) Whether Netaji Subhas Chandra Bose is dead or alive; (b) If he is dead, whether he died in the plane crash, as alleged; (c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- (d) Whether he has died in any other manner at any other place and, if so, when & how;
- (e) If he is alive, in respect of his whereabouts. The Commission submitted its report on November 8, 2005. The detailed report in three volumes answered as follows : (a) Netaji Subhas Chandra Bose is dead;
- (b) He did not die in the plane crash, as alleged; (c) The ashes in the Japanese Temple are not of Netaji; (d) In absence of any clinching evidence a positive answer cannot be given; and
- (f) Answer already given in (a) above.

On May 16, 2006 the Ministry of Home Affairs, Government of India tabled the Action Taken Report on the report of the Commission, before the Parliament. The Action Taken Report would provide as follows :

"The Government have examined the Report submitted by the Commission on 8th November, 2005 in detail and have not agreed with the findings that -

(a) Netaji did not die in the plane crash; and (b) The ashes in the Renkoji Temple were not of Netaji." The matter would rest at that stage. The cause is still left unfound. The present three applications, which we heard, were the fall out in desperation.

PRESENT LIS :

WP 2003 of 2006

Mr. Rudrajyoti Bhattacharjee, an Advocate of this Court filed application in the nature of Public Interest Litigation inter alia praying for the following reliefs :

"a) A Writ of and/or order or direction in the nature of mandamus commanding the respondents, its agents and subordinates to act in accordance to law and to rescind, recall and cancel the impugned Action Taken Report, being Annexure "P/14" forthwith.

b) To command the respondents to implement in particular the crucial and all-important findings reached by the Commission after an elaborate, indepth inquiry and/or probe by giving public hearing to all concerns that Netaji did not die on the 18th August 1945 as alleged and also the categorical findings that the alleged ashes of Netaji kept in the Renkoji Temple are not ashes of Netaji Subhas Chandra Bose should be implemented and acted upon.

c) For a further declaration that all connected official records, papers books published by the Government, its agent or any other publications should be corrected strictly and scrupulously in terms of the Inquiry Commissions report;

d) A writ of and/or order or directions in the nature of Certiorari requiring respondents to certify, transmit and produce all records relating to the enquiry into the disappearance of Netaji Subhas Chandra Bose; and to show cause as to why the order complained of should not be set aside and upon hearing the parties and perusing the

records be pleased to quash the impugned Action Taken Report being Annexure "P/14". e) A writ of and/or order or direction in the nature of Prohibition restraining the respondents, its subordinates and agents from giving any effect or further effect to the impugned Action Taken Report being Annexure-"P/14".

f) A writ of and/or order or direction in the nature of Prohibition restraining the respondents, its subordinate and agents from allowing any person or persons to bring ashes, kept in the Renkoji Temple."

The Union of India filed affidavit-in-opposition through one Swapan Kumar Goswami, Under Secretary to the Ministry of Home Affairs affirmed on October 25, 2007 inter alia contending, the Government of India thoroughly examined the report of Mukherjee Commission and took the decision not to accept the findings as they were not based on firm grounds. The deponent also asserted, the Union of India acted in terms of the Commissions of Enquiry Act, 1952. He prayed for dismissal of the writ petition. In short, the Government did not offer any further enquiry to be made in this regard. The parties subsequently filed supplementary affidavits, last one was filed in September, 2010. In the supplementary affidavit the petitioner No. 2 Surojit Dasgupta contended, "the Parliament has no business to take decisions on Action Taken Report". In effect, the petitioners challenged the Action Taken Report. The Deputy Director, Rajya Sabha Secretariat vide office Memorandum dated August 21, 2008 informed, "since there was no Motion before the House to accept or reject the said ATR, the Secretariat has no comment to offer in the matter".

WP 27541 (W) OF 2006 :

Two other Advocates filed this Public Interest Litigation inter alia objecting to the money spent from the public exchequer for maintaining Renkoji Temple and the ashes preserved there, stated to be of Netaji, even after the Mukherjee Commission held, it would not belong to Netaji. The Central Government also filed affidavit in this matter. They also relied upon Action Taken Report and informed, "the Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo". With regard to the other allegation of spending from public exchequer for research on Netaji, the deponent contended, "Netaji Research Bureau is an internationally known Institute of History, Politics and International Relations established in 1957. Netaji Research Bureau is celebrating its Golden Jubilee anniversary in the year 2007-2008. The Founder Director of Netaji Research Bureau Dr. Sisir Kumar Bose had collected materials on the life of his uncle Netaji Subhas Chandra Bose from all over the world for many decades. Apart from a very rich archives the Bureau has a museum and preserved rooms of Netaji which are visited by hundreds of people throughout the year. The Bureau has published 12 volumes of Netaji Subhas Chandra Bose's works. It has also produced documentaries and audio cassettes on him. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. It is run by a body of distinguished persons".

The deponent prayed for dismissal of the application. WP 8215 (W) OF 2008 :

The petitioner No. 2 in the second application filed this Public Interest Litigation with another Advocate of this Court inter alia praying for re-appointment or re-opening the Mukherjee Commission to have concrete answer in respect of Item No. (d) and (e) which remain unanswered. The Central Government also filed affidavit through Under Secretary, Ministry of Home Affairs inter alia contending, this issue was barred by the provision of Article 122 of the Constitution being in complete domain of the Parliament. This affidavit also relied upon Action Taken Report and its acceptance by both Houses of the Parliament. The affidavit would also suggest, the Commission worked for six and half years and the Government had to spend huge sum of money from the public exchequer on this count. Commenting on the report the deponent stated, "Justice Mukherjee Commission's Report, therefore, does not conclusively disprove the plane crash in the light of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Enquiry". ARGUMENTS :

Mr. Ashim Kumar Ganguly, learned advocate argued in support of his petition being the second one. He would contend, once the Mukherjee Commission categorically answered, Netaji did not die in the plane crash, there was no reason why the public exchequer would be spent on the maintenance of Renkoji Temple and the ashes stated to be of Netaji.

Mr. Subhas Chandra Bose, learned advocate arguing in support of the third petition would contend, the report of Mukherjee Commission was inconclusive, hence, it was incumbent upon the Central Government to re-appoint or re-open the issue appointing another Commission by the same person or anyone else to find out definite answer on the issues left by the earlier Commission. Mr. Rudrajyoti Bhattacharjee, learned advocate representing the other petitioners being the added respondents in the third petition would support the petitioner's contentions.

Mr. Keshav Bhattacharjee, learned advocate argued in the first matter. He took immense pain to draw our attention to report of the Commission, its finding recorded therein and contended, even after the alleged plane crash Netaji was alive and the independent Government of the country was aware of the same. In this regard, he would refer to the documents collected by Mukherjee Commission and annexed to its report. In fact, Taiwan Government in their E-mail admitted, "we may not sure whether U.S. still hold the passenger lists of that crashed plane by the very limited information, but this is the most closest information we could gather after the most effort we did in this regard". In the said E-mail they admitted, there was no evidence to show that one plane had crashed carrying Netaji. He would also refer to pages 255-262 where the Chairman of the Mukherjee Commission submitted report on his visit to Taipei and Bangkok to show, he was not convinced with the alleged plane crash incident. He would also refer to the letter of the then Prime Minister of India appearing at page-33 of the petition that would quote a statement of Shyamlal Jain, Stenographer working for Jawharlal Nehru addressed to one Mr. Atlee,

"Dear Mr. Atlee,

I understand from most reliable source that Subhas Chandra Bose your War Criminal has been allowed by Stalin to enter into the Russian territory, which act of his is clear treachery and betrayal of faith, as Russia was an ally of the British and the America, Stalin should not have done so. This is just for your information and notice." This was recorded by Khosla Commission. He also contended, the Government of India was aware, there was no alleged plane crash on August 18, 1945 involving Netaji's death. The Taiwan Government carried out a detailed investigation and submitted a report to the Government to United Kingdom on May 23, 1956 that report was inspected by Mukherjee Commission which would show, there was no air crash involving Netaji. He would refer to the Radio Message of Netaji appearing at page 114A-B. Netaji's voice was broadcast on December 26, 1945, January 1, 1946 and February 1946. Commenting on the Action Taken Report, Mr. Bhattacharjee would contend, how the Home Minister himself could sign the report as would be appearing at the top of it at page-127 of the compilation. He prayed for suitable orders re-opening the entire issue so that the people of the country would know, what had actually happened to Netaji.

Per contra, Mr. R.N. Das, learned senior advocate appearing for the Union of India in all the three matters would refer to various provisions of the Commission of Enquiry Act and contend, once the report was placed in both Houses of the Parliament and the Action Taken Report was accepted, the Court would have hardly anything to do in the matter. He would contend, Action Taken Report once accepted by the Parliament, was no more available for judicial scrutiny. He would refer to the documents pertaining to tabling of the Action Taken Report before the Parliament. He would lastly contend, the Commission appointed under the said Act of 1952 was recommendatory in nature. It was nothing but a fact finding body without any power of adjudication or granting of relief. Mr. Somenath Bose, learned advocate also appearing for the Union of India would add, once the Parliament accepted the report and did not find anything wrong the Court would have hardly anything to do. The proceeding of the Parliament was protected from judicial scrutiny under Article 122 of the Constitution. On the Netaji Research Bureau, Mr. Basu would contend, Bureau was doing research job not only on this subject but also on other subjects too. Hence, it would not be proper to shut the

organization or stop funding the same. Commenting on the evidence of Shyamlal Jain, he would say, it had no evidentiary value in view of the provisions of Section 18 of the Evidence Act.

While replying, Mr. Subhas Chandra Bose would contend, Commission's power was not challenged in the writ petition. It was the Action Taken Report of the Government that would definitely come under the judicial scrutiny. In any event, the Action Taken Report being cryptic and devoid of reason, would certainly warrant interference. Joining him, Mr. Ashim Kumar Ganguly would contend, Netaji Research Bureau did not file any affidavit counter acting the allegations made against them.

Mr. Keshav Bhattacharjee, learned advocate while replying, dealt with the cases cited by Mr. Das. He would also contend, the Action Taken Report was challenged and not the Parliament proceeding, hence, Article 122 would have no application. He would sum up his argument, once the Action Taken Report did not disclose any reason subsequent affidavit supplementing reason would not cure the defect. The official stand of the Government was not known to the members of the public that must come up.

CASAES CITED :

1. All India Reporter 1999 Calcutta page-9 (Rudra Jyoti Bhattacharjee & Ors. Vs. Union of India & Ors.);
2. All India Reporter 1997 Supreme Court page-3019 (Union of India Vs. Bijan Ghosh & Ors.);
3. All India Reporter 1977 Volume-IV Supreme Court Cases page-608 (State of Karnataka Vs. Union of India & Anr.);
4. 2004 Volume-V Supreme Court Cases page-568 (State of Orissa Vs. Dhaniram Luhar);
5. All India Reporter 1978 Supreme Court page-851 (Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi);
6. 70 Calcutta Weekly Notes page-399 (Sahu Jain Ltd. Vs. Deputy Secretary & Ors.);
7. All India Reporter 1967 Supreme Court page-295 (Barium Chemicals Ltd. and Anr. Vs. Company Law Board and Ors.). The case of Barium Chemicals (supra) was relied upon on the sufficiency of reason. The case of State of Orissa (supra) was relied upon as to the scope of Court's interference on a cryptic order being devoid of reason. The decision in the case of Mohinder Singh Gill (supra) and Sahu Jain (supra) were cited on the issue as to how the definite assertion made in the case could be dealt with in the affidavit-in-opposition.

The above are well settled principles of law that would still hold the field. We need not deliberate further on the same. OUR VIEW :

We would be concerned with the appropriate provisions of the said Act of 1952 to Mr. R.N. Das find out our competence to deal with the issue. Section 3 would empower the Union of India or the State to appoint Commission of Enquiry for the purpose of making an enquiry into any definite matter of public importance and performing such functions and submit report before the Parliament or the Assembly as the case may be. As soon as the report would be submitted to the Government, the Government would lay the same before the Parliament and/or the Assembly as the case may be, together with the Action Taken Report on the same. The Mukherjee Commission was appointed under Section 3 of the said Act of 1952. The Mukherjee Commission submitted its report before the Government. Government placed the Action Taken Report before both Houses of Parliament. They accepted the same. Article 122 would prevent us from questioning the same through a judicial scrutiny. Hence, we are unhesitatingly of the opinion, the Mukherjee Commission report or the Action Taken Report on the same is not available to us for any judicial scrutiny. We are constrained to hold, the challenge to the Action Taken Report is not maintainable. It is unfortunate, even after sixty-six years of

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independence we would not know how our leader being universally acclaimed, spent his last days. We would not know, how did he die. We would not know, where was he after he was last seen in early 1940s. Our Division Bench, in the earlier proceeding in the case of Rudra Jyoti Bhattacharjee (supra), categorically asked the Government to conduct a vigorous enquiry that the Central Government complied. We have nothing further to do on that score. In the case of State of Karnataka (supra) the State filed a suit in the Supreme Court for a declaration that the appointment of Commission by the Central Government was illegal and ultra vires on the ground, the said Act of 1952 did not authorize the Central Government to constitute such Commission. The Seven-Judge Bench, per majority, held, the suit maintainable and thereafter observed, the Central Government was quite competent under the said Act of 1952 to appoint such Commission and the suit was liable to be dismissed.

On the issue of expenditure on Renkoji Temple, we are of the view, once the Central Government by affidavit made it clear, they no more funded the maintenance of the said Temple of the ashes, no interference on this score is required. On the Netaji Research Bureau, it is common knowledge of all concerned, the Bureau is working on the Research. Without any plausible reason being shown, there could not be any direction for stoppage of the grant. While we hold, the petitioners in all the three petitions would not be entitled to any relief as claimed, we would still observe and express our hope and trust, the Central Government, in their wisdom, would certainly keep it in mind and would explore the possibility, if possible, to find out the answer on the issue which is a long cherished desire of the people of the country. In short, it is our earnest endeavour to observe, the issue must not be closed forever. The writ petitions are accordingly disposed of without any order as to costs.

Dr. Mrinal Kanti Chaudhuri, J:

I agree.

[ASHIM KUMAR BANERJEE, J.]

[DR. MRINAL KANTI CHAUDHURI, J.]